*(3) $20.00 for each amended Form U–4 or Form U–5 filed by the member with the NASD;*

*(4) $95.00 for additional processing of each initial or amended Form U–4 or Form U–5 that includes the initial reporting, amendment, or certification of one or more disclosure events or proceedings;*

*(5) $10.00 for each fingerprint card submitted by the member to the NASD, plus any other charge that may be imposed by the United States Department of Justice for processing such fingerprint card; and*

* * * * *

(h)[(i) Each member shall be assessed a fee of $40.00 for each notice of termination of a registered representative or registered principal filed with the Corporation as required by Section 3 of Article IV of the By-Laws.

(ii) A late filing fee of $65.00 shall be assessed a member who fails to file with the Corporation written notice of termination of a registered representative or registered principal within thirty (30) calendar days of such termination.

(iii)] In the event a member believes it should not be required to pay the late filing fee, it shall be entitled to a hearing in accordance with the procedures set forth in the Rule 9640 Series.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99–297 Filed 1–6–99; 8:45 am]

**BILLING CODE 8010–01–M**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–40864; File No. SR–NASD–98–90]**

## Self-Regulatory Organizations; Order Granting Accelerated Approval to Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Proposed Amendments to the Code of Procedure to Provide for the Office of Disciplinary Affairs of NASD Regulation, Inc. to Authorize all Enforcement Actions

December 30, 1998.

### I. Introduction

On December 4, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder.[2] In its proposal, NASD Regulation seeks to amend the rules of the Association to permit the Office of Disciplinary Affairs to authorize enforcement actions. Notice of the proposal was published in the **Federal Register** on December 14, 1998 (''Notice'').[3] The Commission received no comment letters on the filing. This order approves the proposal.

### II. Description of the Proposal

The Association proposes centralizing review and authorization of all disciplinary actions within a single department, the Office of Disciplinary Affairs of NASD Regulation. Currently, the Case Authorization Unit (''CAU''), located in the Department of Enforcement of NASD Regulation, authorizes all disciplinary actions. Review of these cases, however, can take place in a separate office. Known as the Office of Disciplinary Policy (''ODP''), this office is the primary reviewer of cases developed in the Washington, DC, office and cases involving ''quality-of-market'' issues. The ODP, which reports to the Office of the President of NASD Regulation, also reviews and comments on all cases involving policy issues.

Because of the overlap between the CAU and the ODP, the Association wishes to consolidate their functions in a single place—the Office of Disciplinary Affairs (''ODA''). Under the proposed rule change, as approved hereby, all cases would be authorized by the ODA. Both the ODP and the CAU will cease to function following approval of these changes. According to NASD Regulation, the change will increase overall operating efficiency and maintain the consistency and independence of the case authorization function.

### III. Discussion

As discussed below, the Commission has determined to approve the Association's proposal centralizing the authorization of all enforcement actions within the ODA. The standard by which the Commission must evaluate a proposed rule change is set forth in Section 19(b) of the Act. the Commission must approve a proposed NASD rule change if it finds that the proposal is consistent with the requirements of Section 15A of the Act[4] and the rules and regulations thereunder that govern the NASD.[5] In evaluating a given proposal, the Commission examines the record before it and all relevant factors and necessary information. In addition, Section 15A of the Act establishes specific standards for NASD rules against which the Commission must measure the proposal.[6]

Specifically, the Commission finds that the proposed rule change is consistent with Sections 15A(b)(7) and (8) of the Act, which require that the rules of the Association provide a fair procedure for the disciplining of members and associated persons. According to NASD Regulation, centralizing the authorization of disciplinary actions within the ODA will help maintain the consistency of the case authorization process. The Commission agrees that consistency in the authorizing of disciplinary actions contributes to maintaining fair procedures for the disciplining of members.

Additionally, NASD Regulation asserts that the proposed rule change will help maintain the independence of the case authorization function. Under the current rules, disciplinary actions were authorized by the CAU, which is located within the Department of Enforcement of NASD Regulation. Under the proposed rule, the ODA, which will authorize all enforcement actions, will report directly to Office of the President of NASD Regulation; thus separating it from the Department of Enforcement, who is a party to the proceeding. The Commission agrees that independence in the authorizing of disciplinary actions also contributes to maintaining fair procedures for the disciplining of members.

NASD Regulation requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act to approve the proposed rule change prior to the 30th day after its publication in the **Federal Register**. According to the NASD, accelerated approval is necessary to facilitate the orderly transfer of functions to the ODA, which will start operating on January 1, 1999. The Commission finds that this is an appropriate reason for accelerating approval, and notes this approval follows a notice and comment period of fifteen days that expired without receipt of comment.

### IV. Conclusion

The Commission believes that the proposed rule change is consistent with the Act, and, particularly, with Section 15A thereof.[7] In approving the

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 40755 (December 7, 1998), 63 FR 68814 (December 14, 1998) (File No. SR–NASD–98–90)

[4] 15 U.S.C. 78*o*–3.

[5] U.S.C. 78s(b).

[6] 15 U.S.C. 78*o*–3.

[7] 15 U.S.C. 78*o*–3.

proposed, the Commission has considered its impact on efficiency, competition, and capital formation.[8]

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NASD–98–90) relating to proposed amendments to the Rules of the Association to permit the Office of Disciplinary Affairs of NASD Regulation to authorize all enforcement actions, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99–298 Filed 1–6–99; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–40858; File No. SR–NYSE–98–28]**

## Self Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Arbitration Rules

December 29, 1998.

### I. Introduction

On September 15, 1998, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change would amend NYSE Rules 347 and 600 to exclude claims of employment discrimination, including sexual harassment, in violation of a statute from arbitration unless the parties have agreed to arbitrate the claim after it has arisen. Notice of the proposed rule change, together with the substance of the proposal, was provided in a Commission release and in the **Federal Register**.[3] The Commission received three comment letters and a response to those letters from the Exchange. The Commission is approving the proposed rule change.

### II. Description

The proposed rule change will modify the current requirement in NYSE Rule 347 that any employment-related disputes between a registered representative and a member or member organization be settled by arbitration. The proposal provides that statutory employment discrimination claims are eligible for arbitration at the Exchange only if the parties agree to arbitrate the claims after they arise.

### Background

NYSE Rule 347 has been in effect since the late 1950's and requires that any employment-related disputes between a registered representative and a member or member organization be settled by arbitration.[4] In order to become ''registered'' an individual is required to sign and file with the Exchange a Form U–4 (Uniform Application for Securities Registration or Transfer). Form U–4 requires registered persons to submit to arbitration any claim that must be arbitrated under the rules of the self-regulatory organizations (''SROs'') with which they register.

Until the 1990's, the rule was generally invoked to arbitrate business and contract disputes, such as wrongful discharge, breach of contract or claims regarding compensation. In 1991, the Supreme Court held in *Gilmer* v. *Interstate/Johnson Lane*,[5] that a registered representative could be compelled to arbitrate his claim under the Age Discrimantion in Employment Act (''ADEA'') pursuant to Form U–4 and NYSE Rule 347. Subsequent courts have held that claims alleging employment discrimation, including sexual harassment claims, may be compelled to arbitration.[6]

In 1994, the General Accounting Office (''GAO'') conducted a study on the arbitration of employment discrimination disputes in the securities industry.[7] The GAO Report did not critize the fairness of arbitration as a means of resolving employment discrimination disputes, but did make recommendations for improving the arbitration process. Despite steps to improve the process, registered representatives and others continue to oppose arbitration of discrimination claims pursuant to the Form U–4 and other pre-dispute agreements. In July 1997, the U.S. Equal Employment Opportunity Commission (''EEOC'') issued a policy statement that mandatory pre-dispute agreements to arbitrate statutory employment discrimination claims are consistent with the purpose of the federal civil rights laws.[8]

In support of the EEOC's position, the Ninth Circuit Court of Appeals held in May 1998, in *Duffield* v. *Robertson Stephens & Company*,[9] that employers could not compel employees to waive their right to a judicial forum under Title VII, and therefore plaintiff could not be compelled to arbitrate her statutory employment discrimination claims pursuant to Form U–4.[10] Other federal courts consistently upheld the arbitration of employment discrimination claims pursuant to the Form U–4.

On June 22, 1998, the Commission approved a proposed rule change by the National Association of Securities Dealers, Inc. (''NASD'') to remove the requirement from its rules that registered representatives must arbitrate statutory employment discrimination claims.[11] Under the NASD's rule, an employee could file such a claim in court unless he or she was obligated to arbitrate pursuant to a separate agreement entered into either before or after the dispute arose.

The Commission's order approving the NASD rule change noted that the NASD intends to make changes to its arbitration program to make arbitration more attractive to parties for the resolution of discrimination claims.[12] An NASD ''Working Group'' that includes attorneys who represent employees, member firms and neutrals

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[8] 15 U.S.C. 78(c)f.

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

[10] 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. 40479 (September 24, 1998) 63 FR 52782 (October 1, 1998).

[4] NYSE Rule 347 provides ''Any controversy between a registered representative and any member or member organization arising out of the employment or termination of employment of such registered representative by and with such member or member organization shall be settled by arbitration, at the instance of any such party, in accordance with the arbitration procedure prescribed elsewhere in these rules.''

[5] 500 U.S. 20 (1991).

[6] Indeed, they have extended the reasoning of Gilmer to cover disputes arising under: Title VII of the Civil Rights Act of 1964, *see, e.g., Alford* v. *Dean Witter Reynolds, Inc.*, 939 F. 2d 229 (5th Cir. 1991), *Cremin* v. *Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 957 F. Supp. 1460 (N.D. III. 1997), *but see Rosenberg* v. *Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 1998 U.S. Dist. Lexis 877 (D. Mass. 1998)); the Americans with Disabilities Act, (*see, e.g., Austin* v. *Owens-Brockway Glass Container, Inc.*, 78 F. 3d 875, 881 (4th Cir.) cert. denied, 117 S. Ct. 432 (1996); and state statutes of a similar nature (*see, e.g., Kalider* v. *Shearson Lehman Hutton, Inc.*, 789 F. Supp. 179, 180 (W.D. Pa. 1991)).

[7] Employment Discrimination: How Registered Representatives in Discrimination Disputes (GAO/HEHS–94–17, March 30, 1994).

[8] EEOC Notice No. 915.002, July 10, 1997.

[9] 1998 WL 227469 (9th Cir.).

[10] In January 1998, a U.S. District Court in Massachusetts, in *Rosenberg* v. *Merrill Lynch*, 76 FEP 681 (D.Mass 1998), declined to compel arbitration of plaintiff's Title VII and the ADEA claims pursuant to the agreement to arbitrate contained in the Form U–4 plaintiff was required to sign as a condition of her employment.

[11] Exchange Act Release No. 40109 (June 22, 1998) 63 FR 35299 (June 29, 1998).

[12] *Id.*