Acquiring Series. Applicants agree not to make any material changes to the Agreement without prior Commission approval.

8. Definitive proxy solicitation materials have been filed with the Commission and were mailed to shareholders of the Acquired Series on or about December 4, 1998. A special meeting of shareholders is scheduled for January 15, 1999.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by or under common control with the other person, and (d) if the other person is an investment company, any investment adviser of that company. Applicants state that the Acquiring and Acquired Series may be deemed affiliated persons and thus the Reorganization may be prohibited by section 17(a).

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants believe that they may not rely on rule 17a–8 in connection with the Reorganization because the Acquiring and Acquired Series may be deemed to be affiliated by reason other than having a common investment adviser, common directors, and/or common officers. Keystone might be deemed to have an indirect pecuniary interest in the performance of the assets held by the Keystone Plan. Because the Keystone Plan owns 5% or more of the outstanding voting securities of each of the Acquired Series, each Acquiring Series may be deemed an affiliated person of an affiliated person of each of the Acquired Series for a reason other than having a common investment adviser.

4. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to consummate the Reorganization. Applicants submit that the Reorganization satisfies the standards of section 17(b) of the Act. Applicants believe that the terms of the Reorganization are fair and reasonable and do not involve overreaching. Applicants state that the Reorganization will be based on the relative NAVs of the Acquiring and Acquired Series' shares. Applicants also state that the Acquiring Series were created for the express purpose of acquiring the assets and liabilities of the corresponding Acquired Series, and that their investment objectives, policies and restrictions were established to be substantially identical to those of the corresponding Acquired Series. In addition, applicants state that the Boards, including a majority of the Independent Trustees, have made the requisite determinations that the participation of the Acquiring and Acquired Series in the proposed Reorganization is in the best interests of each Series and that such participation will not dilute the interests of shareholders of the Series.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–353 Filed 1–7–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40873; File No. SR–CHX–98–29]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by The Chicago Stock Exchange, Inc. and Amendment No. 1 Thereto Relating to the Exchange's Arbitration Rules

December 31, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and rule 19b–4 thereunder,[2] notice is hereby given that on December 21, 1998, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change, as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange filed Amendment No. 1 on December 30, 1998 to request accelerated approval.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposal and Amendment No. 1 thereto.

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

The Exchange proposes to amend Rules 23 and 24 of Article VII to exclude, from the CHX arbitration forum, claims of employment discrimination, including sexual harassment, in violation of a statute unless the parties involved have agreed to arbitrate the claim after it has arisen.

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 self-regulatory organization 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 self-regulatory organization has prepared summaries, set forth in

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

[2] 17 CFR 240.19b–4.

[3] December 30, 1998 letter from Kirsten M. Carlson, Foley & Lardner (counsel for the Exchange), to Katherine A. England, Assistant Director, Market Regulation, SEC.

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

Purpose

The purpose of the proposed rule change is twofold. First the rule change would exclude any claim alleging employment discrimination, including any sexual harassment claim, in violation of a statute [4] from the requirement that all disputes between a nominee or other associated person and a member or member organization arising out of Exchange business be arbitrated, except where the parties agree to arbitrate the claim after it has arisen. (Article VIII, Rule 23.) Second, the rule change would amend the Exchange's general arbitration rules to provide that any claim alleging employment discrimination, including any sexual harassment claim, in violation of a statute shall be eligible for submission to arbitration only where the parties have agreed to arbitrate the claim after it has arisen. (Article VIII, Rule 24.)

Background

Exchange Rule 23 of Article VIII requires that any disputes between a nominee or other associated person and a member or member organization arising out of Exchange business be settled by arbitration. In order to become an associated person, 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 persons to submit to arbitration any claim that is required to be arbitrated under the rules of the self-regulatory organizations with which they register.

In 1994, the General Accounting Office (''GAO'') conducted a study on the arbitration of employment discrimination disputes in the securities industry.[5] While the GAO report did not address the adequacy of arbitration as a means of resolving employment discrimination disputes, it made several recommendations for improving the arbitration process. The recommendations included specialized training of arbitrators in discrimination law and the appointment of more women and minorities as arbitrators.

Despite steps to improve the process, associated persons and others continue to oppose mandatory 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 discrimination claims are inconsistent with the purpose of the federal civil rights laws.[6]

Two federal court cases decided in 1998 support the EEOC's position. In January 1998, a Massachusetts district court in *Rosenberg* v. *Merrill Lynch*, 76 FEP 681 (D. Mass. 1998), declined to compel arbitration in plaintiff's Title VII and the Age Discrimination in Employment Act (''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. In May 1998, the Court of Appeals for the Ninth Circuit held, in *Duffield* v. *Robertson Stephens & Company*, 144 F.3d 1182 (9th Cir. 1998), cert. denied, (U.S. Nov. 9, 1998) (No. 98–237), 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 discrimination claims pursuant to form U–4. Prior to these decisions, federal courts had consistently upheld the arbitration of employment discrimination claims pursuant to the Form U–4.

On October 17, 1997, the National Association of Securities Dealers, Inc. (''NASD'') submitted to the Commission, a proposed rule change to remove the requirement from its rules that registered representatives must arbitrate statutory employment discrimination claims.[7] Under the NASD's proposal, an employee could file such a claim in court unless he was obligated to arbitrate pursuant to a separate agreement entered into either before or after the dispute arose.[8] The Commission's order approving the NASD's changes stated that the NASD intends to make changes to its arbitration program to make arbitration more attractive to parties for the resolution of discrimination claims.[9]

The Exchange's proposal will create an exception to the Exchange rule that requires arbitration of all claims of nominees and other associated persons arising out of Exchange business for claims alleging employment discrimination, including any sexual harassment claim.

In addition, the Exchange is going further by proposing rule amendments under which statutory discrimination claims will not be eligible for arbitration pursuant to any pre-dispute agreement to arbitrate. This action brings the Exchange's arbitration policy into conformity with the EEOC's ''Policy Statement on Mandatory Binding Arbitration of Employment Discrimination Disputes as a Condition of Employment.'' [10]

In its December 1997 comment letter to the SEC regarding the NASD proposal, the EEOC reiterated its position ''that *pre*—dispute arbitration agreements, particularly those that mandate binding arbitration of discrimination claims as a condition of employment, are contrary to the fundamental principles reflected in this nation's employment discrimination laws. We recommend therefore, that the proposed rule be revised to permit arbitration of statutory employment discrimination claims only under *post*-dispute arbitration agreements.'' [11]

The Exchange's proposed amendments will limit the availability of the Exchange's forum for the resolution of employment discrimination claims that otherwise meet the Exchange's arbitration requirements to those cases where the parties have agreed to arbitrate the claim after it has arisen, as recommended by the EEOC.

The Exchange is also proposing to amend Rule 24 which requires the arbitration of disputes between customers or non-members and members or member organizations, pursuant to any written agreement to arbitrate or upon the demand of the customer or non-member. The rule change adds paragraph (d) to provide that claims alleging employment discrimination, including any sexual harassment claim, shall be eligible for submission to arbitration only where the

[4] Claims ''in violation of a statute'' are not limited to the federal civil rights laws and include all federal, state and local anti-discrimination statutes.

[5] *Employment Discrimination: How Registered Representative Fare in Discrimination Disputes* (GAO/HEHS–94–17, March 30, 1994).

[6] EEOC Notice No. 915.002, July 10, 1977.

[7] Exchange Act Release No. 39421 (December 10, 1997).

[8] On September 15, 1998, the New York Stock Exchange, Inc, (''NYSE'') submitted to the SEC a proposed rule change to exclude from mandatory arbitration disputes between registered representatives and members or member organizations and between employees and members or member organizations relating to employment discrimination, including sexual harassment claims. Unlike the NASD rule, however, the NYSE proposed rule would only permit an agreement to arbitrate entered into after the dispute arose to be binding. The Commission approved the NYSE proposal on December 29, 1998. (*See* Exchange Act Release No. 40858, December 29, 1998).

[9] Exchange Act Release No. 40109, June 22, 1998.

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

[11] Letter of Gilbert F. Casellas, Chairman, EEOC, to Jonathan G. Katz, Secretary, SEC, Re: NASD Proposed Rule Change on Arbitration of Employment Discrimination Claims, December 1997.

parties have agreed to arbitrate the claim after it has arisen. This amendment excludes from Exchange arbitration statutory employment discrimination claims of non-registered employees (or other persons that may not be deemed to be an associated person) pursuant to pre-dispute arbitration agreements.

The EEOC and several members of Congress have endorsed arbitration as an effective means of resolving discrimination claims, provided the parties agree to arbitrate after the claim has arisen. The Exchange's proposed amendment provides a forum for those employees who choose post-dispute to resolve their statutory employment discrimination claims through arbitration.

Some employment disputes may contain both contract or tort claims as well as statutory employment discrimination claims. Under amended Rule 23 (and Rule 24 for non-registered employees who have executed pre-dispute arbitration agreements) these cases may be bifurcated. The employment discrimination claims will be heard in a forum other than the exchange, such as court, while any claims subject to arbitration may continue to be heard at the Exchange.[12] The parties may avoid bifurcation by agreeing to proceed with all claims in a single forum. Given a choice, after a dispute has arisen, employees in many instances believe that arbitration is preferable to protracted and expensive litigation and will willingly make that choice.[13]

The proposed rule change is consistent with Section 6(b)(5) of the Exchange Act in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons regulating securities transactions, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

[12] The bifurcation of securities industry claims is not unprecedented. Before the Supreme Court's decision in *Shearson* v. *McMahon*, 482 U.S. 220 (1987) (holding that claims under the Securities Exchange Act of 1934 could be compelled to arbitration), the Supreme Court decided *Dean Witter Reynolds, Inc.* v. *Byrd*, 105 S. Ct. 1238 (1985). In *Byrd*, the dispute involved allegations of federal securities laws violations and pendent state law claims. The Court compelled the state law claims to arbitration and held that the federal securities laws claims could be heard in court.

[13] *See Duffield* v. *Robertson Stephens & Company*, 144 F.3d 1182 (9th Cir. 1998), cert. denied, (U.S. Nov. 9, 1998) (No. 98–237).

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

The Exchange does not believe that the proposed rule change will impose any burden on competition.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

After careful consideration, the Commission has concluded, for the reasons set forth below, that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder. Further, the Exchange is requesting accelerated approval of the proposed rule change pursuant to section 19(b)(2) so that it may become effective on or shortly after January 1, 1999, on which date the NYSE proposal discussed above becomes effective. The Commission notes that the proposal is virtually identical to an NYSE proposal the Commission has already approved, one that was subject to the full comment period.[14] It is expected that in the near future other self-regulatory organizations (''SROs'') will adopt similar rules or issue interpretive releases to provide uniformity throughout the securities industry. To prevent forum shopping among SROs and to prevent prospective plaintiffs from being disadvantaged by any inconsistency in the effective dates of SROs' rule changes or interpretative releases, the Commission finds good cause for approving the proposal prior to the 30th day after the date of publication of notice of the filing in the **Federal Register**.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 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. 522, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–98–29 and should be submitted by January 29, 1999.

[14] *See* footnote 8 above.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[15] that the proposal, SR–CHX–98–29, and amendment No. 1 thereto be and hereby is approved.[16]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

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

[16] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40878; File No. SR–NASD–98–51]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change and Amendment No. 1 To Be Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Microcap Initiatives-Amendments to NASD Rules 6530 and 6540

January 4, 1999.

I. Introduction

On October 7, 1998, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'')[1] and Rule 19b–4 thereunder,[2] proposed amendments to NASD Rules

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

[2] 17 CFR 240.19b–4.