

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-49779; File No. SR-NYSE-2004-16)

May 27, 2004

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change and Amendment No. 1 thereto by the New York Stock Exchange, Inc. Relating to Revised Uniform Application for Securities Industry Registration or Transfer (Form U4) and Revised Uniform Termination Notice for Securities Industry Registration (Form U5)

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> notice is hereby given that on March 17, 2004, the New York Stock Exchange, Inc. (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the NYSE. The NYSE amended the proposed rule change on April 30, 2004.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval of the proposed rule change, as amended.

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

The NYSE proposes for its use revised Forms U4 and U5<sup>4</sup> (collectively, the

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated April 29, 2004 (“Amendment No. 1”). In Amendment No. 1, the NYSE amended the proposed rule change to file it pursuant to Section 19(b)(2) of the Act and to request that the Commission grant accelerated approval of the proposed rule change.

<sup>4</sup> Form U4 is the form for “Uniform Application for Securities Industry Registration or Transfer” and Form U5 is the form for “Uniform Termination Notice for Securities Industry Registration.”

“Forms”).

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 NYSE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The NYSE 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 Exchange hereby proposes to use the revised Forms. The revised Forms were filed by the National Association of Securities Dealers, Inc. (“NASD”) with the Commission on April 8, 2003, and approved by the Commission on July 10, 2003.<sup>5</sup> The Exchange uses these Forms as part of its registration and oversight of persons associated with members and member organizations. In addition, these Forms are used in connection with the Central Registration Depository (“CRD”) system in which the Exchange participates. The CRD is an industry-wide automated system, which allows for the efficient review and tracking of registered persons in the securities industry, as well as changes in their work and disciplinary histories.

The effective date for the Forms is July 14, 2003. The Exchange believes that the NASD’s filing was based on its efforts to enhance the CRD and the registration and termination process of individuals in the securities industry. The Exchange also believes that the Forms were amended to provide additional enhancements and information for

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<sup>5</sup> See Securities Exchange Act Release No. 48161 (July 10, 2003), 68 FR 42444 (July 17, 2003) (SR-NASD-2003-57).

more meaningful and detailed disclosure. The Forms are to be submitted electronically through the Internet.

The revisions to the Forms include, among other things: (1) additional disclosure questions to the “Regulatory Disciplinary Actions” subsection of Section 14 (Disclosure Questions) of the Form U4 to elicit information regarding events that might cause a person to be subject to a statutory disqualification as a result of additional categories of disqualification enumerated in certain sections of the Act<sup>6</sup> created by the enactment of the Sarbanes-Oxley Act of 2002 (“Sarbanes-Oxley Act”);<sup>7</sup> (2) adding a Disclosure Reporting Page (“DRP”) and a question to the Form U5 that parallels the DRP and the Form U4 question relating to terminations for cause; and (3) certain technical, clarifying, and conforming changes to the Forms to facilitate accurate reporting.<sup>8</sup>

#### New Disclosure Questions Required by Enactment of the Sarbanes-Oxley Act

Specific revisions that affect NYSE members and member organizations include new disclosure questions required by the enactment of the Sarbanes-Oxley Act. Section 604 of the Sarbanes-Oxley Act created new categories of “statutory disqualification,” enumerated in Section 15(b)(4)(H) of the Act.<sup>9</sup> Under the expanded definition, members, member organizations, and their associated persons may be subject to a disqualification (i.e., may be required to obtain regulatory approval

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<sup>6</sup> 15 U.S.C. 78a et seq.

<sup>7</sup> 15 U.S.C. 78o-6.

<sup>8</sup> On April 6, 2003, the North American Securities Administrators Association, Inc. voted to approve the revised Forms at its membership meeting.

<sup>9</sup> 15 U.S.C. 78o(b)(4)(H).

before becoming a member of the NYSE or becoming associated with an NYSE member or member organization) if they are subject to certain orders issued by a state securities commission or state insurance commissioner (or any agency or officer performing like functions), state authorities that supervise or examine banks, savings associations, or credit unions, an appropriate federal banking authority, or the National Credit Union Administration. Specifically, persons (including members and member organizations) may be subject to a statutory disqualification based on orders issued by the above agencies that: (1) bar a person from association or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities; or (2) are based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.<sup>10</sup>

The Form U4 has historically been the vehicle for the reporting of events that may cause a person to become subject to a statutory disqualification. With the concurrence of a working group of regulators, including state regulators, representatives of other self-regulatory organizations (“SROs”), and Commission observers, Section 14 (Disclosure Questions) of the Form U4 was amended to elicit reporting of regulatory actions that may now make individuals subject to a statutory disqualification under the expanded definition of “statutory disqualification” in the Act created by the passage of the Sarbanes-Oxley Act.

The changes include renumbering current Regulatory Action Disclosure Question 14D on the Form U4 as Question 14D(1), adding Question 14D(2) to mirror the language

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<sup>10</sup> See Section 15(b)(4)(H) of the Act, 15 U.S.C. 78o(b)(4)(H).

in Section 15(b)(4)(H) of the Act,<sup>11</sup> and modifying the “Regulatory Action DRP” on the Forms. To aid in reporting events under Question 14D(2), the “Specific Instructions” section of the Form U4 has been amended with respect to Section 14 (Disclosure Questions). In addition, two new defined terms, “final order” and “federal banking agency,” have been added to the “Explanation of Terms” section of the Form U4. The “Regulatory Action” DRP on the Form U4 has also been amended to aid in reporting events required to be reported pursuant to the Sarbanes-Oxley Act.

#### Modifications to the Form U4 Relating to Fingerprinting Requirements

The language associated with questions under Section 2 (Fingerprint Information) and Section 6 (Registration Requests with Affiliated Firms) on the Form U4 has been amended to clarify fingerprinting requirements, including electronic filing representations and exceptions to the fingerprint requirement.<sup>12</sup>

Under Section 2 of the Form U4, the “Electronic Filing Representation” subsection was modified to address two situations that were not adequately covered by the previous language. The first situation involves a member or member organization submitting fingerprint results on behalf of an individual whose fingerprints were processed through another SRO, in lieu of submitting fingerprint cards. The second situation is when a member or member organization is seeking registration for an individual who: (1) is currently employed by the member or member organization

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<sup>11</sup> 15 U.S.C. 78o(b)(4)(H).

<sup>12</sup> In conjunction with these changes relating to the fingerprint questions, the “Specific Instructions” section of the Form U4 with respect to Section 2 (Fingerprint Information) and Section 6 (Registration Requests with Affiliated Firms) was amended.

(usually in an unregistered capacity), and (2) previously has been fingerprinted (through the NYSE or another SRO).

The current electronic filing representation states that the member or member organization is submitting or will promptly submit fingerprint cards as required by applicable SRO rules. In the two situations described above, members or member organizations will not be submitting fingerprint cards contemporaneously with, or within 30 days of, filing a Form U4. The amended language will allow members or member organizations and individuals to represent that the filing member or member organization has continuously employed the individual since the last submission of a fingerprint card to the NYSE (and therefore is not required to resubmit a card at this time) or has continuously employed the individual since the individual has had his or her fingerprints processed through another SRO, and the individual will submit (or has submitted) the processed results to the CRD system.

Furthermore, under Section 2, the “Exceptions to the Fingerprint Requirement” subsection has been modified. Currently, members or member organizations can claim an exception to the fingerprint requirement by affirming that the individual has been continuously employed by the filing member or member organization in an unregistered capacity (and had previously submitted a fingerprint card in connection with that employment) or meets one or more exemptions under Rule 17f-2 of the Act.<sup>13</sup> The

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<sup>13</sup> 17 CFR 240.17f-2. Rule 17f-2 of the Act governs the fingerprinting requirements of securities personnel. Rule 17f-2(a)(1)(i) permits an exemption for persons who are not engaged in the sale of securities; do not regularly have access to the keeping, handling, or processing of securities, monies, or books and records; and do not have supervisory responsibility over persons engaged in such activities. Rule 17f-2(a)(1)(iii) generally exempts the partners, directors, officers, and employees of a broker-dealer that are engaged exclusively in the sales of certain

modifications to the “Exceptions to the Fingerprint Requirement” questions will allow a member or member organization to select the specific permissive exemption under Rule 17f-2(a)(1)(iii).<sup>14</sup>

Section 6 (Registration Requests With Affiliated Firms) of the Form U4 has been amended to add a fingerprint question to create appropriate options for individuals requesting new registrations with a member or member organization affiliated with the filing member or member organization.<sup>15</sup> The proposed “Electronic or Other Filing Representation” subsection will provide three additional radio buttons.<sup>16</sup> Filers can select the current standard representation (i.e., “I am submitting, have submitted, or promptly will submit to the appropriate SRO a fingerprint card...”). In the alternative, the proposed representations will enable the individual to indicate that: (1) he or she has been employed continuously by the filing member or member organization since the last submission of a fingerprint card, and he or she is not required to resubmit a fingerprint card; or (2) the individual has been employed continuously by the filing member or member organization, his or her fingerprints have been processed by an SRO other than the NYSE, and the individual is submitting, has submitted, or promptly will submit the processed results for posting to the CRD. Section 6 will also contain a radio button that

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securities, such as variable contracts, limited partnership interests, and unit investment trusts.

<sup>14</sup> 17 CFR 240.17f-2(a)(1)(iii).

<sup>15</sup> “Affiliated firm” has been added to the “Explanation of Terms” to clarify the use and meaning of the term on the Form U4.

<sup>16</sup> A “radio button” is a navigation and selection device that allows a filer to select a particular option in an electronic filing environment.

allows the applicant to select an exemption to the fingerprint requirement pursuant to Rule 17f-2 of the Act.<sup>17</sup>

### Conforming Changes

(1) A new disclosure question was added to Form U5 (Question 7F) and corresponding DRP to mirror Question 14J on the Form U4. This question will allow firms to report that an individual was terminated after allegations of certain violations, fraud, wrongful taking of property, or failure to supervise, and will further clarify the individual's obligation to report the termination on the Form U4. Currently, the NYSE staff must rely on the reason for termination or an internal review initiated by the member or member organization as reported (by the former employing firm) on an individual's Form U5 to determine whether that individual is required to answer Question 14J affirmatively. The new Question 7F on the Form U5 should clarify for NYSE staff and terminated individuals the basis for and circumstances surrounding the termination (and whether it requires an affirmative answer on the corresponding Form U4 question) and will enable members and member organizations to appropriately identify and provide supporting details regarding terminations for cause. The term "resign or resigned" was also added as an explained term on the Form U5 to parallel the same term on the Form U4 for purposes of the new Question 7F.

(2) The Customer Complaint DRP was modified on both Forms to distinguish the fields that are required for reporting a customer complaint, arbitration, and/or litigation. The amended changes also added instructions and rearranged the questions in a more

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<sup>17</sup> 17 CFR 240.17f-2.



logical order. However, the content of the customer complaint disclosure question and DRP fields were not changed.

(3) The language in Question 14F was revised to clarify the intent of the reporting obligation.<sup>18</sup>

(4) Current hair and eye color codes were changed to match the codes used by the Federal Bureau of Investigation's fingerprint system.

(5) Other consistency changes were also made that relate to bolding or highlighting certain instructions in the DRPs to facilitate appropriate reporting on the Forms.

(6) Grammatical and other modifications have been made to the Forms to make them more consistent and to better clarify the disclosure information required to be reported on the Forms. For example, the summary field of the DRPs on the Forms was reworded to emphasize that those fields are optional for comments by registered representatives, members, and member organizations, respectively.

The revised technical and formatting amendments do not alter the reporting or disclosure requirements applicable to broker-dealers or their registered persons. Therefore, members and member organizations are not required to "re-file" disclosure or administrative information for their associated persons.

The Exchange believes that the amendments will enhance the utility of the Forms as part of the Exchange's registration and oversight function by providing more detailed

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<sup>18</sup> Formerly, Question 14F asked, "Has your authorization to act as an attorney, accountant or federal contractor ever been revoked or suspended?" As amended, Question 14F asks, "Have you ever had an authorization to act as an attorney, accountant or federal contractor that was revoked or suspended?"

reporting concerning persons associated with members and member organizations as well as enhancements to electronic filing through the Internet.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with the requirements under Section 6(b)(5) of the Act<sup>19</sup> in that the proposal is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes that the information reported on the Forms will assist the Exchange in its responsibilities under Section 6(c)(3)(B) of the Act<sup>20</sup> in denying membership to those subject to a statutory disqualification or who cannot meet such standards of training, experience and competence as are prescribed by the rules of the Exchange or those who have engaged in acts or practices inconsistent with just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change, as amended, will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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<sup>19</sup> 15 U.S.C. 78f(b)(5).

<sup>20</sup> 15 U.S.C. 78f(c)(3)(B).

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, as amended.

III. 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. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2004-16 on the subject line.

Paper comments:

Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-NYSE-2004-16. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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. Copies of the filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2004-16 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The NYSE has requested that the Commission grant accelerated approval to the proposed rule change, as amended, based on the fact that the revised Forms were filed by the NASD and have been approved by the Commission,<sup>21</sup> and that the Exchange's proposal is substantively similar to the NASD's proposal, except for certain nomenclature/terms utilized that are specific to the NYSE.

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.<sup>22</sup> In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act<sup>23</sup> and will promote just and equitable principles of trade, foster cooperation and coordination with persons

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<sup>21</sup> See supra note 5.

<sup>22</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>23</sup> 15 U.S.C. 78f(b)(5).

engaged in clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest. In addition, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>24</sup> for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice in the Federal Register. The Commission does not believe that the proposed rule change raises novel regulatory issues. Consequently, the Commission believes that it is appropriate to permit the NYSE to use the Forms as soon as possible. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,<sup>25</sup> to approve to approve the proposal on an accelerated basis.

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<sup>24</sup> 15 U.S.C. 78s(b)(2).

<sup>25</sup> 15 U.S.C. 78s(b)(5).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>26</sup> that the proposed rule change (SR-NYSE-2004-16), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>27</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>26</sup> Id.

<sup>27</sup> 17 CFR 200.30-3(a)(12).