

result, members and the public will possess more accurate information when making investment decisions.

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

Nasdaq does not believe 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

The foregoing proposal has become effective pursuant to section 19(b)(3)(A)(i) of the Act,¹⁰ and Rule 19b-4(f)(1)¹¹ thereunder, in that it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All

submissions should refer to file number SR-NASD-2003-83 and should be submitted by July 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48118; File No. SR-NYSE-2003-18]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Fingerprint-Based Background Checks of Exchange Employees and Others

July 1, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 15, 2003, 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 Exchange. On May 30, 2003, the NYSE filed an amendment to the proposed rule change.³ On June 27, 2003, the NYSE filed a second amendment to the proposed rule change.⁴ 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.

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, from Darla C. Stuckey, Corporate Secretary, NYSE (May 28, 2003) ("Amendment No. 1"). In Amendment No. 1, the NYSE eliminated all references related to the possible application of the proposed rule to members of the media.

⁴ See letter to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, from Mary Yeager, Assistant Secretary, NYSE (June 27, 2003) ("Amendment No. 2"). In Amendment No. 2, the NYSE eliminated the following proposed rule text "or other circumstances in which the Exchange concludes that the person's access to facilities and records does not place the security thereof at risk." The Exchange opted to delete the rule text due to the Commission's concern that such language was overbroad.

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

The NYSE proposes to adopt a new rule pursuant to which the Exchange would obtain fingerprints from prospective and current employees, temporary personnel, independent contractors, and service providers of each of the Exchange and its principal subsidiaries; submit those fingerprints to the Attorney General of the United States or his or her designee for identification and processing; and receive criminal history record information from the Attorney General of the United States or his or her designee for evaluation and use, in accordance with applicable law, in enhancing the security of the facilities, systems, data, and/or records of the Exchange or its principal subsidiaries (collectively, "facilities and records"). The text of the proposed rule change is below. Proposed new language is in italics.

* * * * *

NYSE Rule 28—Fingerprint-Based Background Checks of Exchange Employees and Others

(a) In order to enhance the security of the respective facilities, systems, data, and/or records of the New York Stock Exchange, Inc. ("the Exchange") and its principal subsidiaries (collectively, "facilities and records"), the Exchange shall obtain fingerprints from, and conduct a fingerprint-based background check of, all prospective and current employees, temporary personnel, independent contractors, and service providers of each of the Exchange and its principal subsidiaries. However, the Exchange may determine not to obtain fingerprints from, or to seek fingerprint-based background information with respect to, a person due to that person's limited, supervised, or restricted access to facilities and records, or the nature or location of his or her work or services. The Exchange shall apply this rule in all circumstances where permitted by applicable law.

(b) The Exchange shall submit fingerprints obtained pursuant to this rule to the Attorney General of the United States or his or her designee for identification and processing. The Exchange shall at all times maintain the security of all fingerprints provided to, and all criminal history record information received from, the Attorney General or his or her designee. The Exchange, however, may provide a subsidiary with access to information from background checks based on fingerprints obtained from that

¹⁰ 15 U.S.C. 78s(b)(3)(A)(i).

¹¹ 17 CFR 240.19b-4(f)(1).