

temporary personnel, independent contractors, or service providers, the statute specifically permits self-regulatory organizations designated by the SEC to have access to "all criminal history record information."⁸

The proposed access to criminal history information is also consistent with a recently enacted amendment to New York's General Business Law ("GBL"), which, among other things, requires self-regulatory organizations in New York to fingerprint their employees and those non-employee service providers whose access to facilities or records places the self-regulatory organization at risk.⁹

As stated in the proposed rule change, the Exchange will comply with all applicable laws relating to the use and dissemination of criminal history record information obtained from the FBI.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with the provisions of section 6(b) of the Act,¹⁰ in general, and section 6(b)(5) of the Act,¹¹ in particular, which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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.

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

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

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. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

including whether the proposed rule change, as amended, 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 Exchange. All submissions should refer to File No. SR-NYSE-2003-18 and should be submitted by [insert date 21 days from the date of publication].

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

The Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange,¹² and, in particular section 6(b)(5) of the Act.¹³ The Commission believes that the proposed rule change should promote the objectives of the Act. The Commission notes that the Exchange is an important component of the National Market System and that a serious disruption in the operation of the Exchange could have a significant deleterious impact on the U.S. financial markets. The proposed rule change should promote the objectives of the Act by establishing procedures that help prevent a serious disruption in the operation of the Exchange. Specifically, the proposal should provide the Exchange with an effective tool for identifying individuals whose prior criminal activities may indicate that the individuals pose a heightened threat to the security of the Exchange's operations. Moreover, the Commission notes that, notwithstanding any other provisions of law, it has been granted the authority to designate self-regulatory organizations to receive all criminal history record information held by the

Attorney General.¹⁴ In approving this proposed rule filing, the Commission so designates the Exchange as being authorized to receive such criminal history record information held by the Attorney General.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that granting accelerated approval to the proposed rule change will allow the Exchange to implement expeditiously its fingerprinting program and increase the security of the Exchange, generally. In addition, the Commission believes that accelerated approval is appropriate in this case because the instant NYSE rule proposal is substantially similar to a recently approved Nasdaq Stock Market, Inc. ("Nasdaq") rule.¹⁵

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁶ that the proposed rule change (SR-NYSE-2003-18), as amended, is hereby approved on an accelerated basis.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48112; File No. SR-Phlx-2003-39]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Increasing Index Option Transaction Charges

June 30, 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 30, 2003, the Philadelphia Stock Exchange,

¹⁴ See Section 17(f)(2) of the Act, 15 U.S.C. 78q(f)(2).

¹⁵ See Nasdaq Rule 140, Fingerprint-Based Background Checks of Nasdaq Employees and Independent Contractors. See also Securities Exchange Act Release No. 47240 (January 23, 2003), 68 FR 4810 (January 30, 2003) (approving Nasdaq Rule 140).

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁸ 15 U.S.C. 78q(f)(2).

⁹ N.Y. Gen. Bus. Law 359-e (12-a) (McKinney 2003). New York's Labor Law prohibits fingerprinting for employment purposes unless otherwise permitted by law. N.Y. Labor Law 201-a (McKinney 2003). The GBL amendment ensures that such fingerprinting would not violate New York's Labor Law.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² In granting approval of the proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78f(b)(5).