

promulgated thereunder applicable to a national securities association,¹² and, in particular, with the requirements of Section 15A¹³ of the Act. Specifically, the Commission finds that approval of the proposed rule change is consistent with Section 15A(b)(6)¹⁴ of the Act because it is designed to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission finds that the proposed rule change, as amended, is reasonably designed to accomplish these ends by eliciting the reporting of events that may cause an individual to be subject to a statutory disqualification as that definition has been expanded by the Sarbanes-Oxley Act and, generally, making changes to the Forms U-4 and U-5 that should increase the accuracy and completeness of the information reported on the forms.

The Commission has carefully considered the relevant issues raised by ARM's and Jamieson's comments and is not persuaded by their arguments. With respect to the concerns raised in the ARM Comment, the Commission believes that the NASD has sufficiently responded through Amendment No. 3. Specifically, the Commission believes that the policy decision made in connection with the adoption of proposed Questions 14D(2)(a) and (b) to the Form U-4 was appropriate. In spite of the fact that certain overlap may exist between proposed Questions 14D(1) and 14D(2), the Commission agrees that the creation of a new set of statutory disqualifications by the U.S. Congress through the Sarbanes-Oxley Act is significant and warrants an additional question on the Form U-4 to assure accurate and complete reporting. Likewise, the Commission believes that an annual certification process would not be appropriate in this case.

In addition, the Commission believes that Amendment No. 3, regarding the implementation of the proposed rule change, proposes a fair and reasonable balance between the administrative burden that will be imposed upon member firms and the benefit that the proposed rule change will produce. The NASD's estimates with respect to the relatively low number of firms and representatives that will likely be affected by the new questions to be persuasive.

The Commission believes that the NASD has addressed the concerns

raised in the Jamieson Comment. The Commission believes it is important for NASD staff and terminated individuals to be able to determine the specific basis for and circumstances surrounding the termination (and whether it requires an affirmative answer on the corresponding Form U-4 question). The Commission also considers it significant that, although current Question 7B on Form U-5 elicits information relating to an internal review conducted by a firm, it does not specifically identify whether the registered person was terminated for the reasons specified in the question. Proposed Question 7F should provide this information.

Finally, the Commission, pursuant to Section 19(b)(2)¹⁵ of the Act, finds good cause for approving Amendment No. 3 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. As discussed above, the Commission believes that the NASD has responded to the concerns raised in the ARM Comment and has struck a fair and reasonable balance between the burden that the proposed rule change will impose upon member firms and the benefit that the proposed rule change will produce. In addition, the Commission notes that granting accelerated approval to Amendment No. 3 will facilitate the timely implementation of the proposed rule change and facilitate the NASD's meeting the pre-scheduled CRD systems change implementation date for these forms changes.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3, including whether the amendment 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 No.

SR-NASD-2003-57 and should be submitted by August 7, 2003.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁶ that the proposed rule change (SR-NASD-2003-57), as modified by Amendment Nos. 1 and 2, be, and it hereby are, approved, and that Amendment No. 3 be, and hereby is, 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. 34-48159; File No. SR-NYSE-2002-64]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. To Amend the Interpretation of NYSE Rule 345A ("Continuing Education for Registered Persons")

July 10, 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 December 16, 2002, 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, II, and III below, which Items have been prepared by the Exchange. On June 11, 2003, the NYSE filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The proposed Interpretation of NYSE Rule 345A ("Continuing Education for Registered Persons") would require registered persons to complete a Firm Element Continuing Education Program, prior to December 31, 2006, or pass a qualification exam module prior to selling security futures contracts or

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

¹³ 15 U.S.C. 78o-3.

¹⁴ 15 U.S.C. 78o-3(b)(6).

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 17 CFR 200.30-2(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.