

longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. 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 NASD. All submissions should refer to File No. SR-NASD-2002-108 and should be submitted by October 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>28</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48502; File No. SR-NYSE-2002-35]

### Self-Regulatory Organizations; Notice of Filing of Amendment No. 4 to a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Business Continuity and Contingency Planning

September 17, 2003.

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 September 15, 2003, the New York Stock Exchange, Inc. (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) Amendment No. 4<sup>3</sup> to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The NYSE submitted the original proposed rule change to the Commission on August 16, 2002, and it was published in the **Federal Register** on September 9, 2002.<sup>4</sup> The NYSE subsequently submitted amendments to the proposed rule change on January 13, 2003;<sup>5</sup> March 7, 2003;<sup>6</sup> and March 27, 2003.<sup>7</sup> Amendment No. 3 incorporated and replaced Amendments Nos. 1 and 2 in their entirety. The Commission published Amendment No. 3 for comment in the **Federal Register** on April 3, 2003.<sup>8</sup> In response to comments received, the NYSE is proposing this Amendment No. 4. 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 Exchange is filing with the Commission amendments to proposed new NYSE Rule 446 (“Business Continuity and Contingency Plans”). The proposed rule would require members and member organizations to develop, maintain, review, and update business continuity and contingency plans relating to an emergency or significant business disruption.

Below is the text of the proposed rule change, as amended. The base text is that provided in Amendment No. 3. Language added by Amendment No. 4 is

in *italics*; language deleted by Amendment No. 4 is in brackets.

\* \* \* \* \*

#### Business Continuity and Contingency Plans

##### New Rule 446

(a) Members and member organizations must develop and maintain a written business continuity and contingency plan establishing procedures relating to an emergency or significant business disruption. Such procedures must be reasonably designed to enable members and member organizations [to continue their businesses in the event of a future significant business disruption] *to meet their existing obligations to customers. In addition, such procedures must address their existing relationships with other broker-dealers, and counter-parties.* Members and member organizations must make such plan available to the Exchange upon request.

(b) Members and member organizations must conduct, at a minimum, a yearly review of their business continuity and contingency plan to determine whether any modifications are necessary in light of changes to the member's or member organization's operations, structure, business or location. In the event of a material change to a member's or member organization's operations, structure, business or location, the member or member organization must promptly update its business continuity and contingency plan.

(c) The elements that comprise a business continuity and contingency plan shall be tailored to the size and needs of a member or member organization [so as to enable the member or member organization to continue its business in the event of a future significant business disruption]. Each plan, however, must, at a minimum, address, if applicable:

(1) Books and records back-up and recovery (hard copy and electronic);

(2) identification of all mission critical systems and back-up for such systems;

(3) financial and operational risk assessments;

(4) alternate communications between customers and the firm;

(5) alternate communications between the firm and its employees;

(6) alternate physical location of employees;

(7) *critical* business constituent, bank and counter-party impact;

(8) regulatory reporting; [and]

(9) communications with regulators; *and*

<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 A. England, Division of Market Regulation (“Division”), Commission, dated September 11, 2003 (“Amendment No. 4”).

<sup>4</sup> Securities Exchange Act Release No. 46443 (August 30, 2002), 67 FR 57264 (“Original Notice”).

<sup>5</sup> See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Division, Commission, dated January 10, 2003 (“Amendment No. 1”).

<sup>6</sup> See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Katherine A. England, Division, Commission, dated March 6, 2003 (“Amendment No. 2”).

<sup>7</sup> See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Katherine A. England, Division, Commission, dated March 26, 2003 (“Amendment No. 3”).

<sup>8</sup> Securities Exchange Act Release No. 47584 (March 27, 2003), 68 FR 16334.

<sup>28</sup> 17 CFR 200.30-3(a)(12).