

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

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

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁶ and subparagraph (f)(2) of Rule 19b-4 thereunder.⁷ 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 proposed rule change 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 CBOE. All submissions should refer to File No. SR-CBOE-2003-52 and should be submitted by December 4, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48764; File No. SR-NYSE-2003-34]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Amendment and Restatement of the Constitution of the Exchange To Reform the Governance and Management Architecture of the Exchange

November 7, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, (the "Act" or "Exchange Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 7, 2003, the New York Stock Exchange, Inc. ("NYSE" or the "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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is amending and restating the Constitution of the Exchange. The changes to the Constitution will significantly reform the governance and management architecture of the Exchange.

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 Exchange 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 IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend and restate its Constitution to significantly change and enhance its governance structure. The amended and restated Constitution, marked to show changes from the Exchange's existing Constitution, is included in Exhibit A hereto.

The objectives of the new governance architecture are to

(1) Place responsibility for governance, compensation and internal controls, as well as for supervision of regulation, in the hands of a Board of Directors that is independent both from NYSE management and from the members, member organizations and listed companies.

(2) Separately preserve the existing engagement of the broker-dealer community and listed company community with the NYSE by creating a Board of Executives that will also include the executives of major public and private "buy-side" entities as well as lessor members of the Exchange.

Thus, the proposed rule change calls for a Board of Directors that is completely independent except for the CEO. Requiring independence from owner-constituents goes beyond what we expect of public companies, and it aligns the Exchange's Board with the interests of investors. It is the additional Board of Executives that is intended to ensure ongoing engagement with all of our constituents. Moreover, the Regulatory unit reports directly—and not through the CEO—to our independent Board of Directors, yet retains sufficient proximity to the marketplace to assure the market sensitivity that the Exchange believes is fundamental to effective regulation of the capital markets.

The Exchange notes that its current investigation of specialist trading practices, and the Commission's parallel investigation regarding our surveillance for and enforcement of the affected rules, have caused commentators to call for changes that would end broker dealer self-regulation through exchanges as well as radically alter the auction market. The Exchange also notes that, while the preliminary findings of the internal review of its compensation practices and the preliminary findings of the Commission's inspection and investigation of our specialist regulation have informed our new architecture, neither of these processes are complete and, therefore, the Exchange cannot be

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

⁷ 17 CFR 240.19b-4(f)(2).