

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48769; File No. SR-NYSE-2003-21]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. To Increase Its Fingerprint Processing Fee

November 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 July 22, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to 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 NYSE. The Exchange amended its proposal on August 29, 2003.³ 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 proposes to amend its 2003 Price List to increase its fingerprinting processing fee.⁴ Below is the text of the proposed rule change, as amended. Proposed new language is *italicized*; proposed deleted text is [bracketed].

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NYSE 2003 PRICE LIST— REGULATORY FEES

Fingerprint Processing ..	—new	\$35.00 [\$25.50]
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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 NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change, as amended. 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.

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

1. Purpose

The NYSE proposes to amend its 2003 Price List to increase its fingerprint processing fee. Rule 17f-2 of the Act⁵ requires the fingerprinting of, among others, every partner, director, officer, and certain specified employees of a national securities exchange member, broker, and dealer. Further, such fingerprints must be submitted to the U.S. Attorney General's Office or its designee for processing and review.

Pursuant to a plan filed with and approved by the Commission in accordance with paragraph (c) of Rule 17f-2⁶ ("Plan"), the Exchange acts as a processor of fingerprints whereby it forwards fingerprint cards (and attendant payments) to the Federal Bureau of Investigation ("FBI").

The Exchange performs this service for non-registered employees of members, member organizations, and a limited number of others⁷ pursuant to Rule 17f-2⁸ (e.g., transfer agents). Further, the Exchange processes some fingerprint checks on behalf of both prospective NYSE members not associated with a member organization and current members seeking to change firms. In any instance where the Exchange provides FBI fingerprint processing services to a registered

person, the results are forwarded to the National Association of Securities Dealers, Inc. ("NASD") by the member or member organization for posting to the registered person's central registration depository record.

The current total fee charged by the Exchange per fingerprint card is \$25.50, which amount consists of a \$24.00 processing fee charged by the FBI (of which \$2.00 is returned to the NYSE) and a \$1.50 processing fee charged by the Exchange. The Exchange is proposing to raise the processing fee to \$11.00, an increase of \$9.50. This increase would bring the total processing fee per card to \$35.00. The most recent fee increase occurred in January of 1994 when the FBI raised its processing fee from \$23.00 to \$24.00. The fee of \$1.50 charged by the Exchange has not increased since the Plan's inception in 1976.

The proposed fee increase is directly related to costs incurred from the Exchange's transition from a manual to an electronic method of submitting fingerprint cards to the FBI.⁹ This transition has resulted in a significant improvement in client service. Upgrades to the Exchange system have reduced processing time per card from an average of three weeks to a current turnaround time of 24 to 48 hours.

In addition to recouping consulting and programming expenses incurred during the system upgrade, the increase would offset the cost of maintaining the service. The Exchange also believes that the increase would bring the Exchange's processing fee more in line with similar services provided by NASD.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act¹⁰ in general, and furthers the objectives of Section 6(b)(4) of the Act¹¹ because the rules of the Exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange believes that the proposed rule change is also consistent with Section 6(b)(5)¹² of the Exchange Act in that it enables the Exchange to recover its costs with respect to fingerprint card processing.

⁹ The NYSE has represented that it intends to amend its Plan to reflect this change. Teleconference between Mary Anne Furlong, Director, Rule and Interpretive Standards, NYSE, and Ronesha A. Butler, Attorney, Division, Commission (November 10, 2003).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

¹² 15 U.S.C. 78f(b)(5).

¹⁰ 17 CFR 200.30-3(a)(12).

¹¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Darla C. Stuckey, Corporate Secretary, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 28, 2003, replacing NYSE's original Form 19b-4 filing in its entirety ("Amendment No. 1"). In Amendment No. 1, the NYSE converted the proposed rule change from a filing made pursuant to Section 19(b)(3)(A) to a Section 19(b)(2) filing.

⁴ See 17 CFR 240.17f-2.

⁵ 17 CFR 240.17f-2.

⁶ 17 CFR 240.17f-2(c).

⁷ The NYSE has represented that it has contacted the affected group of non-members and that none of the contacted non-members has objected.

According to the NYSE, the number of interested persons that are not associated with a member or member organization is a very small percentage of the total number of persons who utilize the Exchange's fingerprint processing service. Teleconference between Mary Anne Furlong, Director, Rule and Interpretive Standards, NYSE, and Christopher B. Stone, Special Counsel, Division, Commission (September 23, 2003).

⁸ 17 CFR 240.17f-2.