

No. SR-NYSE-2002-42 and should be submitted by September 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁶

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46443; File No. SR-NYSE-2002-35]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Business Continuity and Contingency Planning

August 30, 2002.

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 August 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. The Commission is publishing this notice to solicit comments on the proposed rule change as amended from interested persons.³

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

The NYSE proposes to adopt new NYSE Rule 446, Business Continuity and Contingency. The proposed rule would require members and member organizations to develop, maintain, review, and update business continuity and contingency plans that establish procedures to be followed in the event of an emergency or significant business disruption. The text of the proposed rule change is below. Proposed new language is in italics.

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 to be followed in the event of an emergency or significant business disruption. Members and member organizations must make such plan available to the Exchange upon request.

(b) Members and member organizations must conduct 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.

(c) The requirements of a business continuity and contingency plan shall be tailored to the size and needs of a member or member organization. Each plan, however, must, at a minimum, address:

- (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) business constituent, bank and counter-party impact;*
- (8) regulatory reporting; and*
- (9) communications with regulators.*

(d) The term "mission critical system," for purposes of this Rule, means any system that is necessary, depending on the nature of a member's or member organization's business, to ensure prompt and accurate processing of securities transactions, including order taking, entry, execution, comparison, allocation, clearance and settlement of securities transactions, the maintenance of customer accounts, access to customer accounts and the delivery of funds and securities.

(e) The term "financial and operational risk assessments," for purposes of this Rule, means a set of written procedures that allow members and member organizations to identify changes in their operational, financial, and credit risk exposure.

(f) Members and member organizations must designate a senior officer, as defined in Rule 351(e), to approve the Plan, who shall also be responsible for the required annual review, as well as an Emergency Contact

Person(s). Such individuals must be identified to the Exchange (by name, title, mailing address, e-mail address, telephone number, and facsimile number). Prompt notification must be given to the Exchange of any change in such designations.

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 and discussed any comments it received on 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.

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

1. Purpose

The events of September 11, 2001, and its disruptive impact on the manner in which the securities industry operated has re-emphasized the need for greater contingency planning for business continuity.

The Exchange proposes new Rule 446 as set forth above, which will require members and member organizations to develop, maintain, review, and update business continuity and contingency plans that establish procedures to be followed in the event of an emergency or significant business disruption. Members and member organizations will be required to make such plans available to the Exchange upon request. Members and member organizations will also be required to conduct 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.

Plans must, at a minimum, address: books and records back-up and recovery (hard copy and electronic); identification of all mission critical systems and back-up for such systems; financial and operational risk assessments; alternate communications between customers and the firm; alternate communications between the firm and its employees; alternate physical location of employees; business constituent, bank and counter-

²⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission notes that the National Association of Securities Dealers, Inc. ("NASD") has proposed a substantially similar business continuity plan rule (File No. SR-NASD-2002-108). The Commission intends to notice concurrently both the NASD proposal and the NYSE proposal. The Commission further notes that, while the NYSE rule would potentially apply to dual NASD and NYSE members, the similarity of the NASD and NYSE proposed rules should prevent conflicting compliance obligations on the part of such dual members.

party impact; regulatory reporting; and communications with regulators.

The term "mission critical system," as defined in the Rule, means any system that is necessary, depending on the nature of a member's or member organization's business, to ensure prompt and accurate processing of securities transactions, including order taking, entry, execution, comparison, allocation, clearance and settlement of securities transactions, the maintenance of customer accounts, access to customer accounts and the delivery of funds and securities.

The term "financial and operational risk assessments," for purposes of this Rule, means a set of written procedures that allow members and member organizations to identify changes in their operational, financial, and credit risk exposure.

The proposed rule also requires that members and member organizations designate and notify the Exchange of a senior officer designated to approve and annually review the plans and an Emergency Contact person(s). Members and member organizations would be required to make such plans available to the Exchange upon request.

The Exchange has worked cooperatively with the NASD in the development of this rule and expects that the NASD will file substantially the same rule with the Commission.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6(b) of the Act,⁴ in general, and section 6(b)(5) of the Act,⁵ in particular, which requires, among other things, that the rules of an exchange be designed, among other things, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information 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 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange 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 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-2002-35 and should be submitted by September 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

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DEPARTMENT OF STATE

[Public Notice 4119]

Culturally Significant Objects Imported for Exhibition Determinations:

"Painted Prints: The Revelation of Color in Northern Renaissance and Baroque Engravings, Etchings and Woodcuts"

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition; "Painted Prints: The Revelation of Color in Northern Renaissance and Baroque Engravings, Etchings and Woodcuts," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at The Baltimore Museum of Art, Baltimore, MD, from on or about October 6, 2002, to on or about January 5, 2003; and the St. Louis Art Museum, St. Louis, MO, from on or about February 14, 2003, to on or about May 18, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619-6529). The address is U.S. Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: August 30, 2002.

Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

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⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

⁶ 17 CFR 200.30-3(a)(12).