

promulgated thereunder applicable to a national securities association,<sup>12</sup> and, in particular, with the requirements of Section 15A<sup>13</sup> of the Act. Specifically, the Commission finds that approval of the proposed rule change is consistent with Section 15A(b)(6)<sup>14</sup> 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)<sup>15</sup> 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,<sup>16</sup> 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.<sup>17</sup>

**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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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

<sup>12</sup> 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).

<sup>13</sup> 15 U.S.C. 78o-3.

<sup>14</sup> 15 U.S.C. 78o-3(b)(6).

<sup>15</sup> 15 U.S.C. 78s(b)(2).

<sup>16</sup> 15 U.S.C. 78s(b)(2).

<sup>17</sup> 17 CFR 200.30-2(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

supervising such activity. The text of the proposed rule change is available at the Office of the Secretary, the NYSE and at the Commission.

## 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 NYSE 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 the Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The Commodity Futures Modernization Act of 2000 permits the trading of security futures, subject to joint regulation by the Commission and the Commodity Futures Trading Commission. Since security futures contracts are new and unfamiliar to a majority of securities-registered persons, the Exchange, in coordination with other securities and futures self-regulatory organizations ("SROs"), is in the process of developing regulatory requirements for the registration and qualification of persons engaged in security futures contracts sales and supervision activities.

In order to engage in securities sales activity, a person must be registered and qualified as a General Securities Registered Representative (Series 7 Examination). Supervision of such activity requires registration and qualification as a General Securities Sales Supervisor (Series 9/10 Examination) or by way of another examination acceptable to the Exchange (e.g., the Series 24 Examination).

These qualification examinations do not, however, cover security futures contracts in sufficient depth or detail to provide an adequate level of competence for registrants who wish to effect transactions or supervise such transactions in the security futures market. A qualification examination specific to security futures is currently under development by the SROs. In the interim, staff of the SROs and the Commission have agreed upon an industry-wide requirement that completion of a prescribed continuing

education program be prerequisite to the sale or supervision of security futures contracts.

Consistent with this initiative, the Exchange proposes an Interpretation to NYSE Rule 345A that would require completion of a Firm Element continuing education program, prior to December 31, 2006, as a prerequisite to either selling security futures contracts or supervising such activity. The Interpretation would require the program to impart sufficient knowledge of, and proficiency in, security futures contracts to enable the responsible conduct of assigned functions.

The program would be subject to the standard Firm Element requirements prescribed in NYSE Rule 345A, including a needs analysis, a content outline, and documentation of participants who attend and complete the program. Prescribed subject area coverage is provided in a Content Outline developed by the Exchange.

Upon the implementation of a Security Futures Contracts qualification examination module, persons not already qualified as General Securities Registered Representatives must pass the qualification examination module in order to engage in or supervise Security Futures Contracts activity. Persons qualified as General Securities Registered Representatives prior to the time such qualification examination module is implemented may, prior to December 31, 2006, complete an appropriate Firm Element continuing education program in lieu of passing the qualification examination.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of section 6(c)(3)(A)<sup>3</sup> of the Act. Under that section, it is the Exchange's responsibility to prescribe standards of training, experience and competence for persons associated with Exchange members and member organizations.

In addition, the Exchange believes that under section 6(c)(3)(B) of the Act,<sup>4</sup> the Exchange may bar a natural person from becoming a member or person associated with a member or member organization if such natural person does not meet such standards of training, experience and competence as are prescribed by the rules of the Exchange.

### 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

Comments were neither solicited nor received.

## 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the File No. SR-NYSE-2002-64 and should be submitted by August 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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<sup>3</sup> 15 U.S.C. 78f(c)(3)(A)(i).

<sup>4</sup> 15 U.S.C. 78f(c)(3)(B)(i).

<sup>5</sup> 17 CFR 200.30-(a)(12).