

to authorized recipients (*i.e.*, to a participant that submitted the fingerprints and to regulators for licensing, registration and other regulatory purposes). Under the terms of the Plan, participants will be able to view the status and results of fingerprints, including any relevant criminal history information, through the NASD's Central Registration Depository (CRD®) system after submission to the Attorney General.

The Commission has reviewed the procedures detailed in the Plan and believes that the Plan is consistent with the public interest and the protection of investors. Thus, the Commission declares the Plan to be effective.

The Commission notes that securities industry fingerprinting procedures are in a state of flux due to rapidly advancing technology. In the event that an industry-wide standard is adopted or becomes prevalent and in the event that this Plan substantially differs therefrom, the Commission would expect Nasdaq to revise its fingerprint plan to incorporate the industry-wide standard.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>3</sup>

**J. Lynn Taylor,**  
Assistant Secretary.

#### **Exhibit A—The NASDAQ Stock Market LLC; Fingerprint Plan**

The NASDAQ Stock Market LLC ("Nasdaq") submits this Fingerprint Plan ("Plan") pursuant to Rule 17f-2(c) under the Securities Exchange Act of 1934 ("Exchange Act").

The purpose of this Plan is to facilitate compliance by Nasdaq members and Nasdaq member applicants with section 17(f)(2) of the Exchange Act and Rule 17f-2 thereunder, by providing a mechanism for Nasdaq members and Nasdaq member applicants to have the fingerprints of their partners, directors, officers, and employees processed by the Attorney General of the United States or his designee (hereinafter "Attorney General") as required by section 17(f)(2) of the Exchange Act and Rule 17f-2 thereunder. The Plan will be administered for Nasdaq by NASD Regulation, Inc. ("NASDR") and the National Association of Securities Dealers, Inc. ("NASD"), the parent corporation of NASDR, pursuant to a regulatory services agreement between NASDR and Nasdaq (the "Regulatory Contract"). In the event that Nasdaq enters into a contract to administer the Plan with a regulatory service provider other than NASDR or decides to

administer the Plan itself, Nasdaq shall file an amendment to the Plan with the Securities and Exchange Commission (the "Commission"). Notwithstanding the fact that Nasdaq has entered into the Regulatory Contract to have NASDR perform some of Nasdaq's functions, Nasdaq shall retain ultimate legal responsibility for, and control of, such functions.

NASD, pursuant to a Plan filed with and declared effective by the Commission,<sup>4</sup> processes fingerprint records of securities industry participants as described herein consistent with section 17(f)(2) of the Exchange Act and Rule 17f-2 thereunder.

NASD accepts fingerprints and identifying information from associated persons of Nasdaq members and Nasdaq member applicants required to be fingerprinted pursuant to Rule 17f-2. Nasdaq members and Nasdaq member applicants may submit fingerprints and identifying information on paper or electronically, provided such submissions are consistent with protocols and requirements established by the Attorney General.

NASD transmits fingerprints and identifying information, on paper or electronically, to the Attorney General for identification and processing, consistent with protocols and requirements established by the Attorney General.

NASD receives processed results from the Attorney General (on paper or electronically) and transmits those results via paper or electronic means to authorized recipients (*i.e.*, to a Nasdaq member or Nasdaq member applicant that submitted the fingerprints and to regulators for licensing, registration and other regulatory purposes), consistent with protocols and requirements established by the Attorney General. In cases where the Attorney General's search on the fingerprints submitted fails to disclose prior arrest data, NASD transmits that result to the Nasdaq member or Nasdaq member applicant that submitted the fingerprints. In cases where the Attorney General's search yields Criminal History Record Information (CHRI), NASD transmits that information to the Nasdaq member or Nasdaq member applicant that submitted the fingerprints. With respect to Nasdaq members, NASD also reviews any CHRI returned by the Attorney General to identify persons who may be subject to statutory disqualification under the Exchange Act and notifies NASD and Nasdaq staff to take action,

as appropriate, with respect to such persons.

Nasdaq advises its members and member applicants of the availability of fingerprint services and any fees charged in connection with those services and the processing of fingerprints pursuant to this Plan. Nasdaq will file any such Nasdaq member fees with the Commission pursuant to section 19(b) of the Exchange Act.

NASD maintains copies of fingerprint processing results received from the Attorney General with respect to fingerprints submitted by NASD pursuant to this Plan, in accordance with Nasdaq's record retention obligations under the Act. Any maintenance of fingerprint records by NASD shall be for NASD's and Nasdaq's own administrative purposes, and NASD is not undertaking to maintain fingerprint records on behalf of Nasdaq members pursuant to Rule 17f-2(d)(2). NASD records in the Central Registration Depository (CRD) the status of fingerprints submitted to the Attorney General. Through the CRD system, NASD makes available to a Nasdaq member that has submitted fingerprints the status and results of such fingerprints after submission to the Attorney General.

Neither NASD nor Nasdaq shall be liable for losses or damages of any kind in connection with fingerprinting services, as a result of a failure to follow, or properly to follow, the procedures described above, or as a result of lost or delayed fingerprint cards, electronic fingerprint records, or fingerprint reports, or as a result of any action by NASD or Nasdaq or NASD's or Nasdaq's failure to take action in connection with this Plan.

[FR Doc. E6-8808 Filed 6-6-06; 8:45 am]

BILLING CODE 8010-01-P

#### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-53917; File No. SR-Amex-2005-116]

#### **Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto Relating to Written Compliance and Supervisory Controls**

June 1, 2006.

#### **I. Introduction**

On November 7, 2005, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission

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

<sup>4</sup> Securities Exchange Act Release No. 53751 (May 2, 2006), 71 FR 27299 (May 10, 2006).

("Commission") 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> the proposed rule change relating to written compliance and supervisory controls. Amex filed Amendment No. 1 to the proposed rule change on April 6, 2006. The proposed rule change was published for comment in the **Federal Register** on April 28, 2006.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

## II. Description of the Proposal

The Exchange is proposing to amend Amex Rule 320 to require members and member organizations with employees to establish, maintain, enforce, and keep current a system of compliance and supervisory controls, including written compliance and supervisory policies and procedures, that are reasonably designed to achieve compliance with applicable securities laws and regulations and Exchange rules.<sup>4</sup> In addition to requiring that the written compliance and supervisory policies and procedures be amended as necessary, the proposed rule would require that a member's or member organization's supervisory control employee provide reports, at least annually, to senior management summarizing certain aspects of the compliance and supervisory program.<sup>5</sup>

In addition, the Exchange proposed clarifying edits to the text of Amex Rule 320, including: (1) Explicit references to a member's or member organization's obligation to comply with Exchange rules in addition to all applicable securities laws and regulations, and (2) replacing references to "member firm" with references to "member organization."

## III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to

a national securities exchange,<sup>6</sup> particularly section 6(b)(5) of the Act,<sup>7</sup> which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, to remove impediments 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.

The Commission believes that the Exchange's proposal to require its members and member organizations to establish, maintain, enforce, and keep current a system of compliance and supervisory controls, including written compliance and supervisory policies and procedures, that are reasonably designed to achieve compliance with applicable securities laws and regulations and Exchange rules should help strengthen the Exchange's regulatory program by increasing member awareness of the laws and rules with which they must comply. It should also provide members an additional incentive to be cognizant of changing regulatory requirements. The Exchange will review the adequacy of its members' and member organizations' compliance programs. Further, the requirement that Amex members and member organizations adopt comprehensive written compliance and supervisory policies and procedures, and report to senior management on certain aspects of the compliance and supervisory program, should result in the periodic assessment by members and member organizations of the effectiveness of their compliance programs. Accordingly, the proposed rule change should help Amex strengthen its regulatory program for detecting, sanctioning, and deterring violations of Exchange rules and securities laws and regulations and, therefore, should promote just and equitable principles of trade.<sup>8</sup> Furthermore, the Commission believes that the Amex's proposal should enhance investor protection by facilitating the Exchange's review of its members' and member organizations' systems of compliance and supervisory

controls and by enhancing the compliance programs at the member level.

## IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (File No. SR-Amex-2005-116), as amended, be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. E6-8802 Filed 6-6-06; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53911; File No. SR-Amex-2006-40]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Direct Registration System Eligibility Requirements

May 31, 2006.

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 April 28, 2006, the American Stock Exchange LLC ("Amex") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

Amex is proposing to add new Rule 778 to its Rules and new Section 135 to its Company Guide to require certain listed securities to be eligible for a Direct Registration System operated by a securities depository.<sup>3</sup>

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

In its filing with the Commission, Amex included statements concerning

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

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

<sup>3</sup> See Securities Exchange Act Release No. 53708 (April 24, 2006), 71 FR 25254.

<sup>4</sup> See proposed Amex Rule 320(e). An Amex member or member organization consisting of a sole individual (*i.e.*, a sole proprietorship) would be required to maintain a written compliance manual specifying the obligations to which such member or member organization is subject along with the processes and controls in place that are reasonably designed to achieve compliance with such obligations. See Amex Rule 320, proposed Commentary .08.

<sup>5</sup> See proposed Amex Rule 320(e)(3).

<sup>6</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> The Commission notes that a national securities exchange must have the capacity to enforce compliance by its members with applicable securities laws, regulations and the exchange's own rules. See *e.g.*, section 6(b)(1) of the Act, 15 U.S.C. 78f(b)(1).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> The term "securities depository" means a securities depository registered as a clearing agency under Section 17A(b)(2) of the Act.