

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53018; File No. SR-NYSE-2005-78)

December 23, 2005

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Amendments to New York Stock Exchange Rules 35 (“Floor Employees to be Registered”) and 301 (“Proposed Transfer or Lease of Membership”)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4² thereunder, notice is hereby given that on December 13, 2005, the New York Stock Exchange, Inc. (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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 from interested persons.

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

The proposed change consists of amendments to NYSE Rules 35 (“Floor Employees to be Registered”) and 301 (“Proposed Transfer or Lease of Membership”) which would limit access to the Exchange Floor until fingerprint reports have been properly processed and approved and would require an alternative background check for persons whose fingerprints are deemed illegible. The text of the proposed rule change is available on NYSE’s Web site (<http://www.nyse.com>), at NYSE’s Office of the Secretary, and at the Commission’s public reference room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

In its filing with the Commission, 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. The text of these statements may be examined at the places specified in Item IV below. 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Rule 35 governs the issuance of Floor tickets (e.g., Regular Tickets and Special Tickets) to Floor employees, which enables them to enter upon the trading Floor. NYSE Rule 35.70 requires the fingerprinting of prospective employees of members and member organizations. Similarly, NYSE Rule 301.23 requires that prospective members be fingerprinted.

Security concerns have suggested a tightening of these rules in two respects: 1) that access to the Floor be denied for persons fingerprinted for the first time until the fingerprinting results have properly been processed and accepted; and 2) that those persons whose fingerprints cannot be read (i.e., are illegible) be subject to an alternative background check acceptable to the Exchange to cover the same criminal convictions included by fingerprint type. In order for a background check to be acceptable to the Exchange, it would, at a minimum, have to disclose the same arrest records which the fingerprint check would for all fifty states and, where the applicant is foreign, through the

records of Interpol. Amendments are also proposed to reflect the fact that the Exchange no longer accepts fingerprint cards, but rather processes them through agents.³

Background

Rule 17f-2⁴ under the Exchange Act sets out the requirements for the fingerprinting of persons employed in the securities industry. The Exchange has adopted procedures to comply with the regulations in order to assure that appropriate persons are fingerprinted and the results of the fingerprinting are reviewed.⁵

Prior to providing member firm employees with Floor ticket access to the Trading Floor and Exchange facilities, and pursuant to NYSE Rules 35 and 345.11 (“Employees – Registration, Approval, Records”),⁶ a member firm must electronically submit a Form U4⁷ via

³ See NYSE Information Memo 04-53, dated October 8, 2004 (announcing that as of October 29, 2004, the Exchange would stop accepting new fingerprints from its members and member organizations and other persons and entities subject to a fingerprinting requirement under Section 17 of the Exchange Act, but noting that certain members unable to submit fingerprints through another SRO would still be able to receive Exchange fingerprint services). Upon the completion of the reorganization of the Exchange proposed for January of 2006, NYSE believes that there should no longer be members unable to utilize another SRO.

⁴ 17 CFR 240.17f-2.

⁵ See NYSE Information Memos 76-30 dated June 25, 1976 and 76-53, dated December 31, 1976, announcing, respectively, the adoption of Exchange Act Rule 17f-2 and SEC approval of the Exchange’s plan for the processing of fingerprints. See also Securities Exchange Act Release No. 13105 (December 23, 1976), 42 FR 753 (January 4, 1977).

⁶ NYSE Rule 345.11 requires, among other things, member firms to thoroughly investigate the previous record of persons whom they contemplate employing.

⁷ Form U4 includes information such as an individual’s ten-year employment history, five-year residential history, education, disciplinary actions, disclosure information, and the self-regulatory organization of registration.

the Central Registration Depository system (“CRD”).⁸ The hiring member firm and the employee are responsible for confirming the accuracy of the information included on the Form U4.⁹

Members and member organizations currently have up to 30 days from the date of the electronic filing of the Form U4 application in Web CRD for the fingerprints to be submitted. Applicants and member organizations sometimes wait until the end of the 30-day period to submit fingerprints, whereas results from the FBI can be reported within 24-48 hours. It is proposed that prospective new Floor employees not be admitted to the Floor until the results of the fingerprinting have been posted to the CRD, reviewed and approved. While the physical security of the Floor is the primary factor in the proposed changes, it is hoped that with this proposed requirement, member organizations will be encouraged to act more promptly.

An applicant who has been fingerprinted previously with a member or registered broker-dealer would be granted a conditional approval, pending review of the fingerprint results submitted by the current employer, assuming the prior employment was within ninety days of the application. Any such applicant would have been under a duty to disclose any reportable events during such employment to a supervising broker-dealer who was charged with a duty to report statutory disqualifications. In addition, the

⁸ The CRD is a registration and licensing system for the U.S. securities industry, state and federal regulators, and SROs. The NASD operates the CRD pursuant to policies developed jointly with the North American Securities Administrators Association, Inc.

⁹ Through CRD the accuracy of the disclosure portion (e.g., criminal disclosures, regulatory action disclosures) of Form U4 pursuant to prior submitted filings and fingerprinting is confirmed.

applicant would, of course, have a duty to disclose any reportable events during the intervening period in his or her application.

A separate issue is raised where applicants submit fingerprints, which cannot be read (i.e., illegible fingerprints). Under Exchange Act Rule 17f-2(a)(1)(iv),¹⁰ when fingerprints are rejected three times as “illegible” by the FBI, the individual is exempt from further fingerprinting.¹¹ Exchange Act Rule 17f-2 does not require an alternate means of conducting a background check. To address this background check lapse, the NYSE’s proposed amendment goes beyond the requirements of the foregoing rule and requires that members and member organizations conduct an alternative background check acceptable to the Exchange. Any such background check, in order to be acceptable to the Exchange, would have to cover the same criminal convictions included by fingerprint type on a fifty state basis and, if the applicant is foreign, an Interpol or other multi-national database check. These checks are generally conducted by non-governmental agencies. Member organizations would be expected to use appropriate due diligence in the selection of investigative agencies for such background checks, assuring their ability to satisfactorily research all pertinent databases. As above, conditional approval would be available to persons previously the subject of a background check, provided employment with a member or registered broker-dealer terminated within ninety days of the applications.

¹⁰ 17 CFR 240.17f-2(a)(1)(iv).

¹¹ In this instance, CRD also conducts a “name check.”

The proposed revisions to NYSE Rules 35.70 and 301.23 will also reflect the fact that the Exchange no longer receives fingerprint cards directly, but does so through agents of the Exchange.¹² However, the Exchange's Membership Services Department will process the fingerprints of member applicants not associated with broker-dealers (not required to be registered on CRD).

2. Statutory Basis

NYSE believes that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Sections 6(b)(5)¹³ which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the public interest. NYSE believes that the proposed rule change, by strengthening the security of the Exchange Floor, will help assure the uninterrupted trading and maintenance of the market.

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

The Exchange believes that the proposal does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

¹² NYSE Rule 345.18 provides that any filing or submission to be made with the Exchange under this rule, where appropriate, may be made with a properly authorized agent acting on behalf of the Exchange and shall be deemed to be a filing with the Exchange.

¹³ 15 U.S.C. 78f(b)(5).

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 self-regulatory organization 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 Exchange Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2005-78 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-NYSE-2005-78. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 the filing also will be available for inspection and copying at the principal office of NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number

SR-NYSE-2005-78 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Jonathan G. Katz
Secretary

¹⁴ 17 CFR 200.30-3(a)(12).