

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50559; File No. SR-NYSE-2004-48)

October 19, 2004

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Create New NYSE Rule 416A (“Member and Member Organization Profile Information Updates and Quarterly Certifications Via the Electronic Filing Platform”) and to Amend NYSE Rule 476A (“Imposition of Fines for Minor Violations of Rules”), Adding New NYSE Rule 416A to the “List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A”

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 19, 2004, 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 October 12, 2004, NYSE amended the proposed rule change.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

Proposed new NYSE Rule 416A (“Member and Member Organization Profile Information Updates and Quarterly Certifications Via the Electronic Filing Platform”) would require members and member organizations to promptly update their organizational information via the Electronic Filing Platform (“EFP”), and to make

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See October 8, 2004 letter from Mary Yeager, Assistant Secretary, Exchange, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, and attachments (“Amendment No. 1”). Amendment No. 1 completely replaced and superseded the original proposed rule change.

quarterly certifications that their organizational information is complete and accurate. The proposed corresponding amendment to NYSE Rule 476A (“Imposition of Fines for Minor Violations of Rules”) would allow the Exchange to sanction members’ and member organizations’ less serious violations of new NYSE Rule 416A pursuant to the minor fine provisions of NYSE Rule 476A. The text of the proposed rule change is available at 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, NYSE included statements concerning the purpose of and basis for 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 416 requires each Exchange member and member organization to submit to the Exchange information it deems essential for the protection of investors and the public interest. In 2001, the Exchange developed a new systems application for the EFP⁴ to facilitate the electronic entry and processing of such information.

NYSE Information Memo No. 01-11, dated June 19, 2001, introduced the membership profile application of the EFP to members and member organizations, and provided a list of the data they were expected to promptly update. Exchange members

⁴ The EFP is an extranet built by the NYSE to support authenticated, encrypted, two-way communications between the NYSE and its membership. It is currently being used for applications such as branch office approvals, short interest reporting, and fingerprints.

and member organizations were informed that, in addition to ongoing updates, they would also be required to use the EFP semiannually (every December and June) to verify the accuracy of their membership profile information.

During the following year, the EFP was modified to enable the submission of additional required contact information (e.g. an anti-money laundering contact, and the heads of block/institutional trading, derivatives desks, and retail and program trading). NYSE Information Memo No. 02-41, dated August 30, 2002, increased from semiannual to quarterly the required frequency of members' and member organizations' review and verification of EFP profile information. It also expanded the list of required membership profile information to include EFP contact persons, member and member organization affiliates, and correspondent broker-dealers and clearing firms.

Need for Proposed Rule 416A

Given the importance of maintaining an up-to-date repository of regulatory information, and of communicating critical information quickly, particularly during emergencies, it has become increasingly necessary for members' and member organizations' profile information to be current and accurate. Despite Information Memos Nos. 01-11 and 02-41, some Exchange members and member organizations have failed to consistently update their profile information, or to conduct the required quarterly reviews and verifications.

Proposed Rule 416A requires each member and member organization to furnish the Exchange with all of the profile information required by the EFP, to promptly (within 30 days) update its required membership profile information after any change in such information, to designate to the Exchange an appropriate senior officer (or his or her

designee) as its membership profile contact person, and to make quarterly electronic certifications that it has reviewed its required membership profile information, and that such information is complete and accurate.

Maintaining a current database of membership information allows the Exchange to better conduct its oversight of members and member organizations. Proposed Rule 416A is necessary to ensure that all members and member organizations promptly update their membership profile information via the EFP, and are vigilant in performing the required quarterly reviews and verifications of the completeness and accuracy of that information.

The Exchange believes that the benefits of proposed Rule 416A outweigh its costs. In a recent order granting approval of a similar National Association of Securities Dealers (“NASD”) rule, the Commission addressed a comment regarding the cost of NASD’s proposed rule, and found that the rule was reasonable based upon the NASD’s need for accurate information.⁵

Need for Amendment to NYSE Rule 476A

NYSE Rule 476A provides that the Exchange may impose a fine, not to exceed \$5,000, on any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization for a minor violation of certain specified Exchange rules.

The purpose of the Rule 476A procedure is to provide a meaningful sanction for a rule violation when the initiation of a disciplinary proceeding under Rule 476 would be more costly and time-consuming than would be warranted given the minor nature of the

⁵ See Securities Exchange Act Release No. 49497 (March 29, 2004), 69 FR 17723 (April 5, 2004) (SR-NASD-2003-184).

violation, or when the violation calls for a stronger regulatory response than an admonition letter would convey. Rule 476A preserves due process rights, identifies those rule violations that may be the subject of summary fines, and includes a schedule of fines.

In SR-NYSE-84-27,⁶ which initially set forth the provisions and procedures of Rule 476A, the Exchange indicated it would amend the list of rules from time to time, as it considered appropriate, in order to phase-in the implementation of Rule 476A as experience with it was gained.

Because of the possible range of severity of members' and member organizations' failure to satisfy the update, review, and certification requirements of the EFP system, an amendment to Rule 476A is necessary to allow the Exchange to sanction members' and member organizations' less serious violations of proposed new Rule 416A pursuant to the minor fine provisions of Rule 476A. The addition of proposed Rule 416A to Rule 476A's list of rule violations will not compromise the Exchange's ability to bring appropriate formal disciplinary actions for more serious violations of Rule 416A.

2. Statutory Basis

NYSE believes that the proposed rule change is consistent with the requirements of Section 6(b)(5)⁷ of the Act, which requires that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest in that it helps the Exchange to maintain a current database of membership information, and to better conduct its oversight of members and member organizations. NYSE also believes

⁶ Securities Exchange Act Release No. 21688 (January 25, 1985), 50 FR 5025 (February 5, 1985).

⁷ 15 U.S.C. 78f(b)(5).

the proposed rule change is consistent with Section 6(b)(6) of the Act,⁸ which requires the rules of the Exchange to provide for its members and persons associated with its members to be appropriately disciplined for violations of those rules through fitting sanctions, including the imposition of fines.

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 Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written 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 Act. Comments may be submitted by any of the following methods:

⁸ 15 U.S.C. 78f(b)(6).

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 No. SR-NYSE-2004-48 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-NYSE-2004-48. 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such 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 No. SR-NYSE-2004-48 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.⁹

Jill M. Peterson
Assistant Secretary

⁹ 17 CFR 200.30-3(a)(12).