

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60399; File No. SR-NYSE-2009-72)

July 30, 2009

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rule 476A to Add Rule 104(a)(1)(A) to Its “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 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on July 22, 2009, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the self-regulatory organization. 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 Exchange proposes to amend NYSE Rule 476A to add Rule 104(a)(1)(A) to its “List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A.”³ The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and www.nyse.com.

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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments

¹ 15 U.S.C.78s(b)(1).

² 17 CFR 240.19b-4.

³ NYSE Amex LLC has submitted a companion rule filing proposing corresponding amendments to NYSE Amex Disciplinary Rule 476A. See SR-NYSE-Amex-2009-47, formally submitted July 22, 2009).

it received on the proposed rule change. The text of those 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 parts of such statements.

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

1. Purpose

The Exchange proposes to amend NYSE Rule 476A to add Rule 104(a)(1)(A) to its “List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A.”

Current NYSE Rule 104

Current NYSE Rule 104 requires, *inter alia*, Designated Market Makers (“DMMs”) registered in one or more securities traded on the Exchange to engage in a course of dealings for their own account to assist in the maintenance of a fair and orderly market, insofar as reasonably practicable, by contributing liquidity when lack of price continuity and depth, or disparity between supply and demand, exists or is reasonably to be anticipated.⁴ This includes an affirmative obligation to provide quotes at the National Best Bid or Offer a minimum percentage of the trading day (“Affirmative Quote Obligation”).

The DMMs’ Affirmative Quote Obligation is set forth in NYSE Rule 104(a)(1)(A). Section (a)(1)(A) of Rule 104 requires DMMs to maintain a bid or an offer at the National Best Bid and National Best Offer (“inside”) at least 10% of the trading day for securities in which the DMM unit is registered with an average daily volume on the Exchange of less than one million shares, and at least 5% for securities in which the DMM unit is registered with an average daily volume equal to or greater than one million shares. Time at the inside is calculated as the average percentage of time the DMM unit has a bid or offer at the inside. In calculating whether

⁴ See NYSE Rule 104(f)(ii)

the DMM is meeting the 10% and 5% requirement, credit may be given for executions for the liquidity provided by the DMM.⁵ DMM Reserve or other hidden orders are not included in the inside quote calculations.

Proposed Rule Change

As noted above, the Exchange proposes to add NYSE Rule 104(a)(1)(A) to its “List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A.”

Under the Exchange’s Minor Rule Violation Plan, NYSE Rule 476A, 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. Fines provide a meaningful sanction for rule violations when the initiation of a disciplinary procedure under Rule 476 is unwarranted given the facts and circumstances of the violation, or when the violation calls for a stronger response informal discipline than an admonition letter.⁶

Currently, when a DMM fails to meet the affirmative quote obligations set forth in Rule 104(a)(1)(A), the Exchange’s only remedy is to bring a formal disciplinary proceeding pursuant to Rule 476. This is the case whether or not the DMM has failed to meet its obligations once or many times and regardless of whether the DMM made a technical error or an intentional one.

⁵ When a DMM sends an s-quote to establish a new best bid or best offer, the DMM's s-quote may end up executing immediately against dark liquidity inside the spread rather than being quoted. Absent rule relief, the s-quote would not be counted toward the DMM Unit's quoting requirement, even though the DMM's intent was to add liquidity to the market, and even though the s-quote in fact resulted in an execution. To address this, the Exchange added a provision to NYSE Rule 104 that allows the Exchange to give credit to a DMM unit that did not meet its quoting requirement as a result of the continuous immediate execution of its s-quotes.

⁶ The Exchange’s Minor Rule Violation Plan, Rule 476A, was originally adopted by the Exchange and approved by the Commission in 1985. See Securities Exchange Act Release No. 34-[sic]21688 (January 25, 1985), 50 FR 5025-01 (February 5, 1985). It has been amended numerous times since its adoption.

The Exchange believes that the current regulatory approach for dealing with DMM quoting obligations is too inflexible. The Exchange recognizes that DMMs may, for many reasons, fail to meet their affirmative quote obligations as prescribed under Rule 104(a)(1)(A). In some circumstances, formal disciplinary measures in accordance with Rule 476 are warranted. However, in other instances such a proceeding may be unwarranted, and the Exchange is of the view that the addition of this Rule to the list of rule violations and fines under Rule 476A will provide a more flexible and appropriate tool to enforce potential failure by DMMs to adhere to the quoting requirements set forth in Rule 104(a)(1)(A), while preserving the Exchange's discretion to seek formal discipline under the appropriate circumstances.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with, and further the objectives of, Section 6(b)(5) of the Act,⁷ in that they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 proposed rule changes also further the objectives of Section 6(b)(6), in that they provide for appropriate discipline for violations of principles of the Act, the rules and regulations thereunder, and Exchange rules and regulations.

The Exchange believes that the proposed rule changes will provide the Exchange with greater regulatory flexibility to enforce the DMM quoting requirements set forth in NYSE Rule 104(a)(1)(A) in a more informal manner while also preserving the Exchange's discretion to seek formal discipline for more serious transgressions as warranted.

⁷ 15 U.S.C. 78f(b)(5).

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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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. 78s(b)(3)(A)(iii).

⁹ 17 CFR 240.19b-4(f)(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 Number SR-NYSE-2009-72 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2009-72. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-2009-72 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).