

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61626; File No. SR-NYSE-2010-07)

March 2, 2010

Self-Regulatory Organizations; New York Stock Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rule 476 to Add a Provision for Violations Relating to Failing to Observe High Standards of Commercial Honor and Just and Equitable Principles of Trade

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on February 5, 2010, 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 and II below, which Items have been 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 476 to add a provision for violations relating to failing to observe high standards of commercial honor and just and equitable principles of trade. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and [www.nyse.com](http://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 it received on the proposed rule change. The text of those statements may be examined at the

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

<sup>2</sup> 15 U.S.C. 78a.

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

In this filing, the New York Stock Exchange LLC (“NYSE” or the “Exchange”) proposes to amend Rule 476 to add a provision for violations relating to failing to observe high standards of commercial honor and just and equitable principles of trade. The Commission previously approved an amendment to NYSE Rule 476 to delete subsection (a)(6), which concerned just and equitable principles of trade.<sup>4</sup> The rationale for that deletion was because NYSE adopted Rule 2010, which provided for the same content as the prior version of Rule 476(a)(6) and which harmonized the Exchange rule with the NYSE Amex LLC (“NYSE Amex”) and Financial Industry Regulatory Authority, Inc. (“FINRA”) standards for just and equitable principles of trade.

However, in deleting Rule 476(a)(6) and replacing it with Rule 2010, the Exchange inadvertently deleted the ability for the Exchange to bring charges relating to failing to observe high standards of commercial honor and just and equitable principles of trade against approved persons, principal executives, and employees of member organizations. As approved, NYSE Rule 2010 is applicable only to members and member organizations. Accordingly, the Exchange proposes to amend Rule 476, which has an enabling provision to bring charges against approved

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<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See Securities Exchange [sic] Release No. 59965 (May 21, 2009), 74 FR 25783 (May 29, 2009) (SR-NYSE-2009-25).

persons and employees of member organizations, to add subsection (a)(6) to cover the same content that was previously deleted. To ensure that the standards for just and equitable principles of trade are consistent across Exchange rules, NYSE Amex, and FINRA, the Exchange proposes to adopt rule text that mirrors the standard set forth in Rule 2010, which is virtually identical to NYSE Amex Equities Rule 2010 and FINRA Rule 2010. As proposed, NYSE Rule 476(a)(6) would read as follows: “failing to observe high standards of commercial honor and just and equitable principles of trade.”

In adopting this revised rule text for Rule 476(a)(6), the Exchange would be able to bring a charge relating to failing to observe high standards of commercial honor and just and equitable principles of trade against not only members and member organizations, but also against principal executives, approved persons, and employees of member organizations. This proposal is consistent with FINRA Rule 2010 because under FINRA Rule 0140, persons associated with a FINRA member have the same duties and obligations as a member under FINRA rules. Accordingly, FINRA has the authority to charge an associated person with a violation of Rule 2010. By adding this standard to Rule 476(a)(6), the Exchange will similarly have the authority to charge an employee of a member organization with a violation relating to failing to observe high standards of commercial honor and just and equitable principles of trade.

To ensure full harmonization, the Exchange also proposes amending Rule 476(a)(5) and deleting the phrase “fraud or fraudulent acts” and replacing it with the rule text from Rule 2020 to provide that the Exchange can bring charges against an employee of a member organization for effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.

Finally, the Exchange proposes deleting the reference to “allied member,” which no longer is a category at the Exchange, and replacing it with “principal executive.”<sup>5</sup>

## 2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act<sup>6</sup> which requires the rules of an exchange 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 change also is designed to support the principles of Section 11A(a)(1)<sup>7</sup> of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes this rule proposal ensures that it will be enabled to charge, as necessary, when a member, member organization, principal executive, approved person, or employee of a member organization fails to observe high standards of commercial honor and just and equitable principles of trade, as contemplated by the Act, or effects any transaction in, or induces the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.

### 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.

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<sup>5</sup> See Securities Exchange Act Release No. 58549 (Sept. 15, 2008), 73 FR 54444 (Sept. 19, 2008) (SR-NYSE-2008-80) (deleting the term “allied member” and replacing it with “principal executive”).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78k-1(a)(1).

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 Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup> 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.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>10</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>11</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that the proposed rule change is restoring the Exchange's ability to discipline

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that NYSE has satisfied the five-day pre-filing notice requirement.

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

employees of member organizations under paragraphs (a)(5) and (a)(6) of Rule 476. The proposed rule change does not raise any new substantive issues and will harmonize NYSE Rules and FINRA Rules in this regard. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change effective and operative upon filing.<sup>12</sup>

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:

##### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2010-07 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.

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<sup>12</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

All submissions should refer to File Number SR-NYSE-2010-07. 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,<sup>13</sup> 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

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<sup>13</sup> The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov/>.

that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing 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 also will be available for inspection and copying at the principal office of NYSE and on its Internet Web site at [www.nyse.com](http://www.nyse.com). 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-2010-07 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.<sup>14</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).