

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-62167; File No. SR-NYSE-2010-37)

May 25, 2010

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Add Certain Violations of its Communications and Give-up Policies to its MRVP

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on May 12, 2010, the 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 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 Exchange proposes to amend NYSE Rule 476A to add Rule 36 (Communications Between Exchange and Members’ Offices) to its List of Exchange Rule Violations and Fines Applicable Thereto (“Minor Rule Violation Plan”).<sup>3</sup> The text of the proposed rule change is available on NYSE’s Web site at [www.nyse.com](http://www.nyse.com), on the Commission’s Web site at [www.sec.gov](http://www.sec.gov), at NYSE, and at the Commission’s Public Reference Room.

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

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

<sup>3</sup> The Exchange’s corporate affiliate, NYSE Amex LLC (“NYSE Amex”), submitted a companion rule filing proposing corresponding amendments to NYSE Amex Disciplinary Rule 476A. See SR-NYSEAmex-2010-44.

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 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 36 (Communications Between Exchange and Members’ Offices) to its Minor Rule Violation Plan.

Background

Effective October 1, 2008, the Exchange’s parent company, NYSE Euronext, acquired the parent company of NYSE Amex pursuant to an Agreement and Plan of Merger (the “Merger”).<sup>4</sup> In connection with the Merger, on December 1, 2008, NYSE Amex relocated all equities trading conducted on its legacy trading systems and facilities located at 86 Trinity Place, New York, New York to systems and facilities located at 11 Wall Street, New York, New York (the “Equities Relocation”).<sup>5</sup> Similarly, on March 2, 2009, NYSE Amex relocated all its options trading to trading systems and facilities located at 11 Wall Street, New York, New York (the

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<sup>4</sup> See Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR-NYSE-2008-60 and SR-Amex-2008-62) (order approving the Merger).

<sup>5</sup> See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex-2008-63) (order approving the Equities Relocation).

“Options Relocation”).<sup>6</sup> As a result of the Equities and Options Relocations, the NYSE and NYSE Amex Equities Trading Floors are located within the 11 Wall Street building in a room adjacent to the NYSE Amex Options Trading Floor.

Current NYSE Rule 36

NYSE Rule 36 governs two primary areas: (i) communications between the Floor and other locations, and (ii) the use and/or possession of portable or wireless communication or trading devices.

First, Rule 36 broadly prohibits members and member organizations from establishing or maintaining any telephonic or electronic communication between the Floor and any other location without Exchange approval. In addition, there are several supplementary provisions that provide more detailed prescriptions for members and member firms.

Rule 36.10 advises members and member organizations that the phone company will not install or disconnect any line between the Floor and any other location without Exchange approval and that such requests should be sent to the Exchange’s Market Operations Division. Rule 36.60 further prohibits members and member organizations from listing a phone line in the name of a non-member.

Rule 36.20 provides that Floor brokers may maintain a phone line at their booth locations on the Floor, or use an Exchange issued and authorized portable phone, to communicate with non-members off the Floor. Only Exchange issued and authorized portable phones may be used on the Floor in accordance with the prescriptions of Rule 36.21, and the use of personal phones

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<sup>6</sup> See Securities Exchange Act Release No. 59472 (February 27, 2009), 74 FR 9843 (March 6, 2009) (SR-NYSEALTR-2008-14) (order approving the Options Relocation).

is expressly prohibited.<sup>7</sup> Rule 36.21 provides that Floor brokers using an Exchange issued and authorized portable phone may communicate directly from the point of sale on the Floor with someone off-Floor. In addition to processing orders, Floor brokers may also provide “market look” observations over the phone. When taking orders over the phone, Floor brokers must comply with Rule 123(e), which requires entry of the order into an electronic system, as well as any and all other record retention requirements under Exchange Rules and the federal securities laws. Exchange issued phones do not permit call-forwarding or call-waiting and may not block a caller’s identification.

Notwithstanding the prescriptions of Rule 36.20, Rule 36.23 provides that members and employees of member organizations may use personal portable or wireless communications devices, including phones, outside the Exchange Trading Floor.<sup>8</sup> In addition, members and employees of member organizations may not use personal portable or wireless communication devices on the NYSE Amex Options Trading Floor unless they are also registered to trade options on NYSE Amex.

Rule 36.30 provides that, subject to Exchange approval, a DMM Unit may maintain a phone line at its post to communicate with its off-Floor business operations and/or its clearing firm. For trading purposes, a DMM Unit’s phone line may only be used to enter hedging orders through the firm’s off-Floor office or clearing firm, or through a member of an options or futures exchange as permitted under Rules 98 and 105.

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<sup>7</sup> Although the Exchange does not currently trade “basket” securities, as defined in Rule 800, Rule 36 provides that Floor brokers trading such securities may establish phone lines at the basket trading location.

<sup>8</sup> Rule 6A defines “Trading Floor” as the restricted-access physical areas designated by the Exchange for the trading of equities securities, commonly known as the “Main Room” and the “Garage.” The Exchange’s Trading Floor does not include the areas where NYSE Amex-listed options are traded, commonly known as the “Blue Room” and the “Extended Blue Room”, also known as the “NYSE Amex Options Trading Floor”.

Under Rule 36.30, a DMM Unit may also maintain a wired or wireless device that has been registered with the Exchange, such as a computer terminal or laptop, to communicate with the DMM Unit's off-Floor algorithms. A DMM Unit using such a wired or wireless device must certify that the device operates in accordance with all SEC and Exchange rules, policies, and procedures. In addition, the DMM Unit must create and maintain records of all messages generated by the wired or wireless device in compliance with NYSE Rule 440 and SEC Rules 17a-3 and 17a-4.

In addition, a DMM Unit registered in an Investment Company Unit (as defined in Section 703.16 of the Listed Company Manual) or a Trust Issued Receipt (as defined in Rule 1200) may use a telephone connection or order entry terminal at its post to enter proprietary orders in (i) the Investment Company Unit or Trust Issued Receipt in another market center, (ii) a component security of such a Unit or Receipt, or (iii) options or futures related to such Unit or Receipt, and may also use the phone to obtain market information with respect to such securities. Any such order executed on the Exchange must be entered and executed in compliance with Exchange Rule 112.20 and SEC Rule 11a2-2(T) and may only be entered for hedging purposes.<sup>9</sup>

To address concerns regarding improper information sharing between the Exchange's Trading Floor and the adjacent NYSE Amex Options Trading Floor, Rule 36.70 prohibits members and member firm employees from (i) using or possessing any wireless trading device that may be used to view or enter orders into the Exchange's trading systems while on the NYSE Amex Options Trading Floor, and (ii) using or possessing any wireless trading device that may be used to view or enter orders into the NYSE Amex Options trading systems while on the Exchange's Trading Floor. These prohibitions apply to any and all wireless trading devices,

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<sup>9</sup> The Exchange does not currently list or trade any Investment Company Units or Trust Issued Receipts.

including devices issued by the Exchange or NYSE Amex, as well as devices that are proprietary to a member, member organization or other entity.

Finally, Rules 36.40 and 36.50 prescribe certain timing and handling requirements for “give-up” or “step out” transactions, whereby a member or member organization executes a customer trade on behalf of another member. While not directly related to member or member organization communications or the use and/or possession of portable or wireless communication or trading devices, these requirements are important for ensuring that members and member organizations properly document these types of transactions.

#### Proposed Rule Change

As noted above, the Exchange proposes to add NYSE Rule 36 to its Minor Rule Violation Plan under Rule 476A.

Under the Exchange’s Minor Rule Violation Plan, 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 specified Exchange rules. Such fines provide a meaningful sanction for rule violations where the facts and circumstances of the violation do not warrant the initiation of a formal disciplinary procedure under Rule 476, but do require a regulatory response that is more significant than an admonition letter.<sup>10</sup>

Currently, because Rule 36 is not part of the Exchange’s Minor Rule Violation Plan, if a member or member firm employee were to violate the prohibitions set forth in Rule 36 the Exchange would be limited to issuing either an admonition letter or initiating formal proceedings

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<sup>10</sup> The Exchange’s Minor Rule Violation Plan was originally adopted by the Exchange and approved by the Commission in 1985. See Securities Exchange Act Release No. 34-21688 (January 25, 1985), 50 FR 5025-01 (February 5, 1985) (SR-NYSE-84-27). It has been amended numerous times since its adoption.

under Rule 476. This is the case whether or not the member or member firm employee violated the rule once or many times, and regardless of whether he or she made an inadvertent error or an intentional one.

The Exchange believes that the current regulatory approach for dealing with Rule 36 violations is too inflexible. The Exchange recognizes that members or member firm employees may violate the prescriptions of Rule 36 intentionally, as well as accidentally or inadvertently. When a violation is intentional, formal disciplinary measures in accordance with Rule 476 may be warranted. However, while an admonition letter might be appropriate for an isolated accidental or inadvertent violation, in other cases an admonition letter would be inadequate even though a formal proceeding may not be warranted. The Exchange believes that the addition of Rule 36 to its Minor Rule Violation Plan under Rule 476A will provide a more flexible and appropriate enforcement tool that preserves the Exchange's discretion to seek formal discipline under appropriate circumstances.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with, and furthers the objectives of, Section 6(b)(5) of the Act,<sup>11</sup> in that it is 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 change also furthers the objectives of Section 6(b)(6) of the Act,<sup>12</sup> in that it provides for appropriate discipline for violations of Exchange rules and regulations.

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<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78f(b)(6).

The Exchange believes that the proposed rule change will provide the Exchange with greater regulatory flexibility to enforce the prescriptions of NYSE Rule 36 in a more informal manner while also preserving the Exchange's discretion to seek formal discipline for more serious transgressions as warranted.

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

Because the foregoing proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</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

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to 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 date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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-2010-37 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-2010-37. 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 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 such filing also will be available for inspection and copying at the principal office of the Exchange. 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-2010-37 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>15</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12) and 200.30-3(a)(44).