

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50942; File No. SR-NYSE-2004-63)

December 29, 2004

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the New York Stock Exchange, Inc. to Amend Exchange Rules Relating to the Return of Membership Certificates, Notice and Return of Exchange-Issued Identification Cards, and Minor Violations of Rules

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 November 1, 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 December 15, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.³ On December 23, 2004, the Exchange filed Amendment No. 2 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Form 19b-4 dated December 15, 2004 (“Amendment No. 1”). In Amendment No. 1, the Exchange included current rule text that was omitted from the original rule filing and made technical changes to the rule text. Amendment No. 1 replaced the original filing in its entirety.

⁴ See Partial Amendment dated December 23, 2004 (“Amendment No. 2”). In Amendment No. 2, the Exchange: (i) submitted the proposed rule text changes in an Exhibit 4, which was inadvertently omitted from Amendment No. 1; (ii) changed “reassignment” to “re-assignment” in proposed NYSE Rule 35.80(3); and (iii) corrected typographical errors made in the original rule filing and Amendment No. 1 with respect to current rule text.

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

The Exchange proposes to: (1) delete the requirement in NYSE Rule 343(d) to return certificates of membership upon termination of customer offices or status as a member organization; (2) add NYSE Rule 35.80 to require members and member organizations to notify the Exchange's Security Office and surrender Exchange-issued identification cards within 24 hours of all employee terminations, re-assignments to non-Floor duties, or cancellations of such identification cards; (3) rescind NYSE Rule 412(g), which currently allows the Exchange to impose fees of up to \$100 per securities account per day for violations of NYSE Rule 412; and (4) enable violations of proposed new NYSE Rule 35.80 to be administered through the Exchange's minor rule violation plan (NYSE Rule 476A).

The text of the proposed amendments is set forth below. Brackets indicate deletions; italics indicate additions.

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Rule 343

Offices - Sole Tenancy, Hours, Display of Membership Certificates

(a) to (c) unchanged

(d) Members and member organizations maintaining customers' offices are required to display in each such office a certificate of membership provided by the Exchange. Such certificate shall be at all times the property of the Exchange[, and every such certificate shall be returned upon termination of the office or of the status as a member organization].

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Rule 35

Floor Employees To Be Registered

No employee of a member or member organization shall be admitted to the Floor unless he is registered with, qualified by and approved by the Exchange, and upon compliance of both the employer and employee with such requirements as the Exchange may determine.

Supplementary Material

(Rule 35.10 through 35.70 unchanged)

.80 Notifications to Security Office and Return of Exchange-Issued Identification CardsIn the event of:

- (1) A Floor member's or employee's termination, or
- (2) Cancellation of a member's or employee's Exchange-issued identification card prior to expiration, or
- (3) A member or member organization's re-assignment of a Floor member or employee to non-Floor functions

Members and member organizations must notify the Exchange's Security Office of the termination, cancellation, or re-assignment, and must surrender the member's or employee's Exchange-issued identification card to the Exchange's Security Office, within 24 hours of the termination, cancellation, or re-assignment.

* * * * *

Rule 412

Customer Account Transfer Contracts

(a) to (f) unchanged

[(g) Unless an exemption has been granted pursuant to paragraph (f) of this rule, the Exchange may impose upon a member organization a fee of up to \$100 per securities account for each day such member organization fails to adhere to the time frames or procedures required by this rule and related published interpretations.]

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Rule 476A

Imposition of Fines for Minor Violation(s) of Rules

(a) to (e) unchanged

Supplementary Material:

List of Exchange Rule Violations and Fines

Applicable Thereto Pursuant to Rule 476A

- Rule 15 (ITS and Pre-Opening Applications) and Rule 15A (ITS “Trade-Throughs” and “Locked-Markets” and ITS Block Trade Policy)
- Rule 35 requirement that employees of members and member organizations be registered with, qualified by, and approved by the Exchange before being admitted to the Trading Floor.
- Failure to notify the Exchange’s Security Office and surrender Exchange-issued identification cards within 24 hours of Floor members’ or employees’ termination or re-assignment, or cancellation of such identification cards, as required by Rule 35.80

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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 Exchange 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. The Exchange 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

Proposed Amendment to NYSE Rule 343(d)

NYSE Rule 343 lists certain procedures that must be followed to, among other things, avoid confusion regarding the Membership affiliation of persons conducting a securities or commodities business with the public. NYSE Rule 343(d) requires a member or member organization that maintains a customer office to display in such office a certificate of membership provided by the Exchange, and requires such certificate to be returned to the Exchange upon termination of the office or the organization's membership status. In practice, these certificates are frequently not returned, and the Exchange believes that the consequences of disregarding this provision of the rule have been negligible. The Exchange believes that rules that are widely violated and not enforced detract from the integrity of all Exchange rules, and the difficulty of enforcing the requirement that certificates be returned outweighs any minimal benefit of its enforcement. Therefore, the Exchange proposes to eliminate in NYSE Rule 343(d) the requirement to return a certificate of membership upon termination of the customer office or the organization's membership status.

Proposed Amendment to NYSE Rule 35 (Adding NYSE Rule 35.80)

The Exchange's Floor Official Manual requires the membership to notify the Security Office of the Exchange within 24 hours of a Floor member's or employee's termination, and to

surrender such member's or employee's Exchange-issued identification card to the Security Office within five business days of termination, or upon the cancellation of the member's or employee's card prior to expiration. A member's or member organization's reassignment of a Floor member or employee to non-Floor functions is also subject to these requirements.⁵

The Exchange believes that the increase in potential security risks since September 11, 2001, necessitates shortening the time allowed for surrendering Exchange-issued identification cards from five days to one day. Codifying the aforementioned requirements in the Exchange's rules would enable the Exchange to enforce those requirements. Thus, the Exchange proposes in proposed NYSE Rule 35.80 to require a member or member organization to notify the Exchange's Security Office, and surrender any Exchange-issued identification card, within 24 hours of a Floor member or employee termination or re-assignment to non-Floor functions, or cancellation of a member's or employee's Exchange-issued identification card prior to expiration.

Proposed Amendment to NYSE Rule 476A

NYSE Rule 476A provides that the Exchange, subject to specified requirements, 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. The purpose of the NYSE Rule 476A procedure is to provide a meaningful sanction for a rule violation when the initiation of full disciplinary proceedings under NYSE Rule 476 is not warranted by the minor nature of the

⁵ Telephone conversation between Ronald Rubin, Senior Special Counsel, NYSE, and Kim Allen, Attorney, Division of Market Regulation ("Division"), Commission, on December 28, 2004.

violation, or when the violation calls for a stronger regulatory response than an admonition letter would convey. NYSE 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 NYSE Rule 476A, the Exchange indicated that 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 a member's or member organization's failure to notify the Exchange's Security Office and surrender an Exchange-issued identification card within 24 hours of a Floor member's or employee's termination or re-assignment to non-Floor functions or cancellation of such identification card, as required by proposed NYSE Rule 35.80, an amendment to NYSE Rule 476A would allow the Exchange to sanction the members' and member organizations' less serious instances of delinquency pursuant to the minor violation fine provisions of NYSE Rule 476A. The Exchange believes that the addition of proposed NYSE Rule 35.80 to the list of rule violations in NYSE Rule 476A would not compromise the Exchange's ability to bring appropriate formal disciplinary actions for more serious violations of NYSE Rule 35.80.

Proposed Amendment to NYSE Rule 412 (Rescinding NYSE Rule 412(g))

NYSE Rule 412 mandates several time frames and procedures that must be followed when transferring customer accounts between member organizations. NYSE Rule 412(g) currently allows the Exchange to impose upon a member organization a fee of up to \$100 per

⁶ See Securities Exchange Act Release No. 21688 (January 25, 1985), 50 FR 5025 (February 5, 1985) (SR-NYSE-84-27).

securities account for each day the organization fails to adhere to the requirements of NYSE Rule 412. NYSE Rule 476A also provides for the imposition of minor fines for such violations.

The Exchange's Special Review of the Consistency of Informal Disciplinary Actions recommended the establishment of guidelines to clearly indicate which NYSE Rule 412 violations should be penalized pursuant to NYSE Rule 412(g) and which should be sanctioned by the imposition of minor fines pursuant to NYSE Rule 476A.⁷

NYSE Rule 412(g) was proposed in 1984, prior to the adoption of NYSE Rule 476A in March 1985.⁸ Once NYSE Rule 476A became operative, the Exchange had another effective method of enforcing NYSE Rule 412, and the sanctions of NYSE Rule 412(g) became superfluous. Historically, the Exchange's practice in most, if not all, cases of minor violations of NYSE Rule 412 has been to assess summary fines under NYSE Rule 476A rather than fees under NYSE Rule 412(g). Therefore, rather than establish guidelines for choosing between NYSE Rule 476A and NYSE Rule 412(g), the Exchange believes it would be more appropriate to simply rescind NYSE Rule 412(g) and continue to sanction violations of NYSE Rule 412 through the assessment of fines pursuant to NYSE Rule 476A.

2. Statutory Basis

The Exchange believes that the proposal, as amended, is consistent with Section 6(b) of

⁷ Rule 476A provides for individuals to be fined \$1,000 for first-time offenses, \$2,500 for second-time offenses, and \$5,000 for subsequent offenses, and for member organizations to be fined \$2,500 for first-time offenses and \$5,000 for subsequent offenses.

⁸ The amendment adding NYSE Rule 412(g) was adopted in November 1985. Telephone conversation between Ronald Rubin, Senior Special Counsel, NYSE, and Kim Allen, Attorney, Division, Commission, on December 28, 2004.

the Act⁹ in general, and Section 6(b)(5) of the Act¹⁰ in particular, in that it is 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 by making the Exchange's rules more consistent with membership and Exchange practices and strengthening the Exchange's security procedures. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(6)¹¹ of the Act, 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 would 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 Exchange consents, the Commission will:

- (A) by order approve such proposed rule change, or

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78f(b)(6).

- (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:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2004-63 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609.

All submissions should refer to File Number SR-NYSE-2004-63. 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, 450 Fifth Street, N.W., Washington, DC. 20549. Copies of such filing will also be available for inspection

and copying at the principal office of the 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-2004-63 and should be submitted by [insert date 21 days from date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).