

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51188; File No. SR-NYSE-2004-63)

February 10, 2005

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

On November 1, 2004, the New York Stock Exchange, Inc. (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change 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 NYSE Rule 35.80 to be administered through the Exchange’s minor rule violation plan (NYSE Rule 476A). On December 15, 2004 and December 23, 2004, the Exchange filed Amendment Nos. 1³ and 2⁴ to the proposed rule change, respectively.

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

The proposed rule change, as amended, was published for notice and comment in the Federal Register on January 7, 2005.⁵ The Commission received no comment letters on the proposal. This order approves the proposed rule change, as amended.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁶ In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,⁷ because rules that are reasonably designed to strengthen the Exchange's security procedures will protect investors and the public interest. The Commission also believes that the Exchange's addition to its minor rule violation plan is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,⁸ which require that the rules of an exchange enforce compliance and provide appropriate discipline for violations of Commission and Exchange rules. In addition, because NYSE Rule 476A provides procedural rights to a person fined under that rule to contest the fine and permit a hearing on the matter, the Commission believes the proposal provides a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d)(1) of the Act.⁹

Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by

⁵ Exhibit 4, which was inadvertently omitted from Amendment No. 1; and (ii) made minor technical corrections to the existing and proposed rule text.

⁶ See Securities Exchange Act Release No. 50942 (December 29, 2004), 70 FR 1487.

⁷ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78f(b)(1) and 78f(b)(6).

⁹ 15 U.S.C. 78f(b)(7) and 78f(d)(1).

Rule 19d-1(c)(2) under the Act¹⁰ which governs minor rule violation plans. The Commission believes that the change to the Exchange's minor rule violation plan will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with NYSE rules and all other rules subject to the imposition of fines under the Exchange's minor rule violation plan. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, the Exchange's minor rule violation plan provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that the Exchange will continue to conduct surveillance with due diligence and make a determination based on its findings, on case-by-case basis, whether fines of more or less than the recommended amount are appropriate for violations under the minor rule violation plan or a violation requires formal disciplinary action.

¹⁰ 17 CFR 240.19d-1(c)(2).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act¹¹ and Rule 19d-1(c)(2) under the Act,¹² that the proposed rule change (SR-NYSE-2004-63), as amended, be, and hereby is, approved and declared effective.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland
Deputy Secretary

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 240.19d-1(c)(2).

¹³ 17 CFR 200.30-3(a)(12) and 200.30-3(a)(44).