

**SECURITIES AND EXCHANGE COMMISSION**  
**(Release No. 34-51276; File No. SR-NYSE-2004-59)**

**February 28, 2005**

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc., to Adopt New Rule 401A (“Customer Complaints”), and an Amendment to Rule 476A (“Imposition of Fines for Minor Violations of Rules”), Adding Rule 401A to the 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 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 21, 2004, the New York Stock Exchange, Inc. (“NYSE” or “Exchange”), filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by NYSE. 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

Proposed new Exchange Rule 401A (“Customer Complaints”) would require members and member organizations (the “Membership” or “Member Firms”) to send acknowledgement of any customer complaint subject to the reporting requirements of Rule 351(d) within 15 business days of receiving such complaint, and to respond to the issues raised in such complaint within a reasonable period of time. The proposed corresponding amendment to Rule 476A (“Imposition of Fines for Minor Violations of Rules”) would allow the Exchange to sanction the Membership’s less serious violations of the acknowledgement provisions of proposed new Rule

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

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

401A pursuant to the minor fine provisions of Rule 476A. Below is the text of the proposed rule change. Proposed new language is italicized.

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## **Rule 401A**

### **Customer Complaints**

(a) For every customer complaint they receive that is subject to the reporting requirements of Rule 351(d), members and member organizations must:

- (1) Acknowledge receipt of the complaint within 15 business days of receiving it, and
- (2) Respond to the issues raised in the complaint within a reasonable period of time.

(b) Each acknowledgement and response required by this rule must be conveyed to the complaining customer by appropriate method:

- (1) Acknowledgements and responses to written complaints must be either:
  - (i) In writing, mailed to the complaining customer's last known address, or
  - (ii) Electronically transmitted to the e-mail address from which the complaint was sent (method only permissible for electronically transmitted complaints).
- (2) Acknowledgements and responses to verbal complaints must be either:
  - (i) In writing, mailed to the complaining customer's last known address, or
  - (ii) Made verbally to the complaining customer, and recorded in a log of verbal acknowledgements and responses to customer complaints.

(c) Written records of the acknowledgements, responses, and logs required by this rule must be retained in accordance with Rule 440 ("Books and Records").

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## **Rule 476A**

### **Imposition of Fines for Minor Violation of Rules**

(Rule 476A (a) through (e) unchanged)

#### **Supplementary Material:**

#### **List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A**

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- Rule 387 requirements for customer COD/POD transactions
- Rule 392 notification requirements
- Failure to acknowledge customer complaint within 15 business days, as required by Rule 401A
- Rule 407 requirements for transactions of employees of the Exchange, members or member organizations
- Rule 407A reporting and notification requirements for members

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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, NYSE 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. NYSE 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

Background

NYSE Rule 351 (“Reporting Requirements”) specifies several occurrences, incidents, and periodic information that the Membership must report to the Exchange. NYSE Rule 351(d) requires the Membership to report to the Exchange statistical information regarding specified verbal and written customer complaints.<sup>3</sup> Each complaint is classified by product and category, and attributed to a registered representative and branch office. The Exchange collects, aggregates, and analyzes these statistics to identify and monitor regulatory problems, focus its field examinations of Member Firms, identify content for its qualification examinations, and modify its continuing education programs. However, there is currently no NYSE rule requiring the Membership to respond to, or even acknowledge, such complaints. Recent Exchange examinations revealed several instances in which Member Firms did not, in fact, respond to or acknowledge customer complaints.

2. Statutory Basis

Proposed new Rule 401A and the corresponding amendment to NYSE Rule 476A are consistent with the requirements of Section 6(b)(5)<sup>4</sup> of the Exchange Act, which requires that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to

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<sup>3</sup> NYSE Information Memo No. 03-38, dated September 19, 2003, specifies that “[a]ll complaints, regardless of how delivered (oral, written, e-mail or fax), are required to be reported to the Exchange.”

<sup>4</sup> 15 U.S.C. 78f(b)(5).

promote just and equitable principles of trade and, in general, to protect investors and the public interest in that it improves customer relations, supervision of registered representatives, early detection of potential regulatory problems, prevention of future securities violations, identification of issues requiring more thorough coverage in continuing education programs, and oversight of the Membership. The proposed rule change is also consistent with Section 6(b)(6)<sup>5</sup> of the Exchange 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 does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange 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 self-regulatory organization consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2004-59 in the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-NYSE-2004-59. This file number should be included on the subject line of 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. Copies of such filing also will 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 submission should refer to File Number SR-NYSE-2004-59 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>6</sup> 17 CFR 200.30-3(a)(12).