

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51539; File No. SR-NYSE-2004-59)

April 13, 2005

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. to Adopt a New Rule (NYSE Rule 401A) Requiring Members and Member Organizations to Respond to Customer Complaints, and Adding Failure to Acknowledge Customer Complaints to the Minor Fine Provisions of NYSE Rule 476A

I. Introduction

On October 21, 2004, the New York Stock Exchange, Inc. (“NYSE” or “the 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 adopt a new rule, denoted NYSE Rule 401A, to require its members and member organizations (“members”) to respond to customer complaints, and to add failure to acknowledge customer complaints to the minor fine provisions of NYSE Rule 476A. The proposed rule change was published for comment in the Federal Register on March 7, 2005.³ The Commission received no comments in response to the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

NYSE Rule 351(d) requires NYSE members to “report to the Exchange statistical information regarding customer complaints relating to such matters as may be specified by the Exchange.” Pursuant to this Rule, the NYSE currently requires reporting of statistical information relating to complaints by customers involving, inter alia, sales practices,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 51276 (Feb. 28, 2005), 70 FR 11040 (Mar. 7, 2005) (“Notice”).

unauthorized trading and misappropriation of funds.⁴ The reporting obligation applies to “[a]ll complaints, regardless of how delivered (oral, written, e-mail or fax)”⁵

The NYSE now proposes to adopt a new Rule, designated 401A, to require its members to acknowledge and respond to customer complaints. Specifically, Rule 401A(a) would require NYSE members to acknowledge receipt of every customer complaint that is subject to the reporting requirements of Rule 351(d) within 15 business days of receipt, and to respond to the issues raised in such complaint within a reasonable period of time. Rule 401A(b) would mandate specific methods of delivery for acknowledgements and responses. Written acknowledgements and responses mailed to the complaining customer’s last known address would suffice in all cases. However, where a complaint was electronically transmitted, members would be permitted to acknowledge and respond to it by electronic transmission to the e-mail address from which the complaint was sent. The Exchange would also permit verbal acknowledgements and responses to verbal complaints, provided that they are recorded in a log of such actions. Paragraph (c) of the proposed rule would require members to keep written records of all such acknowledgements, responses, and logs in accordance with NYSE Rule 440 ("Books and Records").

Finally, the Exchange proposes to add failures to acknowledge customer complaints within 15 days of receipt to the list of violations in NYSE Rule 476A ("Imposition of Fines for Minor Violations of Rules"). Rule 476A provides that the Exchange may impose fines, not to exceed \$5,000, on any member for a minor violation of the Exchange rules specified therein.

⁴ NYSE Information Memo Number 03-39 (Sep. 19, 2003).

⁵ NYSE Information Memo Number 03-38 (Sep. 19, 2003).

III. Discussion and Findings

The Commission finds the proposed rule change is consistent with the Act, and in particular with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be 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.⁶ The Commission further finds that the proposal is consistent with Section 6(b)(6) of the Act,⁷ which requires that members be appropriately disciplined for violations of Exchange rules. Finally, the Commission finds the proposal is consistent with Rule 19d-1(c)(2) under the Act,⁸ which governs minor rule violation plans.

As the Exchange stated in its proposal, no current NYSE rule requires members to acknowledge or respond to complaints from customers.⁹ The proposal will require NYSE members to acknowledge and respond to any and all customer complaints that must be reported to the Exchange under NYSE Rule 351(d). Indeed, under proposed Rule 401A, ignoring or neglecting a customer complaint would constitute a violation of NYSE rules. The Commission believes that the new Rule is consistent with the protection of investors and the public interest because, by requiring members to review and respond to customer complaints, and by requiring records to be kept with respect to such actions, the Rule should encourage NYSE members to attend to complaints that may alert them to potential abuses and to take corrective action, where appropriate.

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78f(b)(6).

⁸ 17 CFR 240.19d-1(c)(2).

⁹ Notice at 11041.

The Commission also believes that the new required procedures should foster an awareness within NYSE member firms of the volume and specific types of complaints they receive, thereby promoting appropriate preventive or supervisory action by the member's compliance personnel. Specifically, requiring firms to review and respond to customer complaints should enhance a member's ability to supervise its personnel by drawing attention to any that may require additional training or monitoring. Exposure to an aggregation of complaints should also alert NYSE members to systemic problems with registered representatives, products, and services and should allow the member to identify areas where it, or its personnel, could improve compliance. Further, the Commission believes that the proposed new Rule should serve to protect investors because it will require NYSE members to notify them when their complaints are received, and to notify them of any action (or refusal to act) with respect to their complaints. In cases where an investor and member are unable to resolve a dispute, records of complaints and responses will document the sequence of correspondence and/or actions for use in any potential formal resolution proceedings.

The Commission believes that the Exchange's proposed requirements relating to the timing and method of delivery of acknowledgements and responses are also reasonably 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, consistent with Section 6(b)(5) of the Act.¹⁰ The Commission notes that written, mailed acknowledgements and responses will always be sufficient, but that e-mail or verbal correspondence will be permitted where the complaint is transmitted by such means. These requirements should minimize any confusion regarding how a complaint is to be processed, and limit administrative burdens on

NYSE members. Likewise, the Commission believes that requiring acknowledgements to be delivered within 15 business days of receipt of a complaint, and responses to be delivered “within a reasonable period of time” should promote prompt and effective resolution of customer complaints, while allowing NYSE members the flexibility to tailor specific responses.

Proposed Rule 401A(c) would require retention of records of acknowledgements and responses in accordance with NYSE Rule 440. The Commission believes that this record-keeping requirement should assist the Exchange in monitoring and enforcing compliance with proposed Rule 401A, as well as Rule 351(d), by allowing it to compare the number of a member’s reported complaints to the number of acknowledgements and responses. Finally, the acknowledgements, responses, and logs required by new Rule 401A(c) may contain useful information for the member’s compliance personnel insofar as it may relate to other obligations of the member, such as the preparation of its annual report on supervision and compliance efforts during the preceding year. See e.g. NYSE Rule 342 (“Offices -- Approval, Supervision and Control”).

The proposed rule change is also 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, and with Rule 19d-1(c)(2) under the Act¹² which governs minor rule violation plans. Rule 476A allows the NYSE to impose sanctions for rule violations that do not rise to the level of requiring formal disciplinary proceedings. Because of the possible

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78f(b)(6).

¹² 17 CFR 240.19d-1(c)(2).

range of severity of a member's failure to satisfy the acknowledgement provisions of the proposed new rule, Rule 476A would be amended in order to allow the NYSE to sanction less serious failures with minor fines. The Commission notes that this proposal will render violations of the acknowledgement provisions of new Rule 401A eligible for treatment as minor violations, but will not require it in all cases. Thus, the Exchange will remain able to determine, on a case-by-case basis, whether a particular violation requires formal disciplinary action. Therefore, the Commission believes that this change will not compromise the Exchange's ability to bring formal disciplinary actions for more serious violations of Rule 401A, but will augment its ability to enforce its rules in cases where full disciplinary proceedings are not warranted.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹³ and Rule 19d-1(c)(2) under the Act,¹⁴ that the proposed rule change (SR-NYSE-2004-59) be, and hereby is, approved.¹⁵

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland
Deputy Secretary

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 240.19d-1(c)(2).

¹⁵ 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).

¹⁶ 17 CFR 200.30-3(a)(12).