

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34 -52016; File No. SR-NYSE-2005-29)

July 12, 2005

Self-Regulatory Organizations; New York Stock Exchange, Inc; Order Granting Approval of a Proposed Rule Change to Remove Incorrect Reference in Its Rule Relating to Failure to Honor an Arbitration Award

On April 25, 2005, 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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend NYSE Rule 637. The proposed rule change was published for comment in the Federal Register on May 6, 2005.<sup>3</sup> The Commission received one comment on the proposal.<sup>4</sup> On July 5, 2005, the NYSE filed a response to the comment letter.<sup>5</sup> This order approves the proposed rule change.

I. Description of Proposed Rule Change

Current NYSE Rule 637 provides that Exchange members, allied members, registered representatives, and member organizations that fail to honor arbitration awards of the NYSE, other self-regulatory organizations, or the American Arbitration Association are “subject to

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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> See Securities Exchange Act Release No. 51622 (April 27, 2005), 70 FR 24146.

<sup>4</sup> See letter from Robert S. Clemente to Jonathan G. Katz, Secretary, Commission, dated May 13, 2005 (“Clemente Letter”).

<sup>5</sup> See letter to Katherine A. England, Assistant Director, Division of Market Regulation (“Division”), Commission, from Mary Yeager, Assistant Secretary, NYSE, dated July 5, 2005 (“NYSE Response Letter”).

disciplinary proceedings in accordance with NYSE Rule 476, NYSE Rule 476A<sup>6</sup> or Article IX” of the NYSE Constitution and Rules.

Although current NYSE Rule 637 specifies NYSE Rule 476A as a possible vehicle for disciplinary action to remedy violations of NYSE Rule 637, NYSE Rule 637 was never added to NYSE Rule 476A’s “List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to NYSE Rule 476A.” This discrepancy could be eliminated by adding NYSE Rule 637 to the list of rules in NYSE Rule 476A. However, due to the serious nature of any failure to honor an arbitration award,<sup>7</sup> the Exchange’s management concluded that violations of NYSE Rule 637 are not properly remedied through the minor fine provisions of NYSE Rule 476A. Therefore, the discrepancy would be more appropriately eliminated through an amendment deleting NYSE Rule 637’s reference to NYSE Rule 476A.

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<sup>6</sup> NYSE Rule 476A provides that the Exchange may impose a fine, not to exceed \$5000, 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 certain specified Exchange rules. The NYSE represents that the purpose of the NYSE Rule 476A procedure is to provide a meaningful sanction for a rule violation when the initiation of a disciplinary proceeding under NYSE Rule 476 would be more costly and time consuming than would be warranted given the minor nature of the violation, or when the violation calls for a stronger regulatory response than an admonition letter would convey. The NYSE states that 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.

<sup>7</sup> The NYSE represents that Exchange arbitration awards rarely remain unsatisfied.

## II. Summary of Comment and NYSE's Response

The Commission received a comment letter on the proposed rule change that supported the adoption of the proposal.<sup>8</sup> The commenter further suggested that the NYSE propose another change to NYSE Rule 637 to conform to NASD Rule 9554 by extending the penalty of disciplinary action to cover failure to honor an arbitration award to any settlement agreement in any dispute submitted to the NYSE. In its response to the comment, the NYSE maintained that the amendment to NYSE Rule 637 suggested by the commenter is beyond the scope of the proposed rule change.<sup>9</sup>

## III. Discussion

The Commission has carefully reviewed the proposed rule change, the comment letter, and the NYSE's response and 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.<sup>10</sup> In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(6) of the Act<sup>11</sup> because it is designed to provide that NYSE's members and persons associated with its members be appropriately disciplined for violation of Exchange rules.

The Exchange has proposed to delete a cross-reference in NYSE Rule 637 that states that a failure to honor an arbitration award is punishable under the Exchange's minor rule violation plan, when in fact it is not. The Commission believes that clarifying the Exchange's rules in this manner is appropriate. The one comment received by the Commission only makes suggestions

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<sup>8</sup> See Clemente Letter, supra note 4.

<sup>9</sup> See NYSE Response Letter, supra note 5.

<sup>10</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78f(b)(6).

for further Exchange rulemaking and, as such, does not raise any issue that would preclude approval of the instant proposal.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-NYSE-2005-29) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(12).