

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53565; File No. SR-NYSE-2005-86)

March 29, 2006

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto to Conform NYSE Rules 123C and 476A with NYSE Rule 80A

On December 7, 2005, 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 amend: (a) NYSE Rule 123C (Market on the Close Policy and Expiration Procedures); and (b) the Supplementary Material to NYSE Rule 476A (Imposition of Fines for Minor Violation(s) of Rules), to conform such rules with the current provisions of NYSE Rule 80A (Index Arbitrage Trading Restrictions). On February 9, 2006, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the Federal Register on February 24, 2006.³ The Commission received no comments regarding the proposal.

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.⁴ In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,⁵ because the proposal promotes transparency and accuracy of the rules of the Exchange for

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 53327 (February 16, 2006), 71 FR 9629.

⁴ In approving this proposed rule change, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f(b)(5).

Exchange members by making clarifying changes to NYSE Rule 123C and conforming NYSE Rules 123C and 476A with the provisions of NYSE Rule 80A. A proposed rule change that is reasonably designed to make the Exchange's rules more consistent and transparent should help protect investors and the public interest.

The Commission further believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,⁶ which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. The Commission notes that the proposed rule change clarifies the list of Exchange rule violations that are subject to disciplinary fines pursuant to NYSE Rule 476A. In addition, because existing NYSE Rule 476A provides procedural rights to a person fined for any violation of an Exchange rule that is determined to be minor in nature to contest the fine and permits disciplinary proceedings on the matter, the Commission believes NYSE Rule 476A, as amended by this 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.⁷

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 Rule 19d-1(c)(2) under the Act⁸ which governs minor rule violation plans. The Commission believes that the proposed change to NYSE Rule 476A will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases

⁶ 15 U.S.C. 78f(b)(1) and 78f(b)(6).

⁷ 15 U.S.C. 78f(b)(7) and 78f(d)(1).

⁸ 17 CFR 240.19d-1(c)(2).

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 minor rule violation plan of the Exchange. 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 under NYSE Rule 476A 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 NYSE will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under the minor rule violation plan or whether a violation requires formal disciplinary action under NYSE Rule 476.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act⁹ and Rule 19d-1(c)(2) under the Act,¹⁰ that the proposed rule change (SR-NYSE-2005-86), as amended, be, and hereby is, approved and declared effective.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Nancy M. Morris
Secretary

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 240.19d-1(c)(2).

¹¹ 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(44).