

NYSE-listed securities, even if such trades occurred on other market centers (certain exceptions would be provided to over-the-counter market makers and specialists on regional exchanges).

a. Bona Fide Hedge Exception

The Exchange seeks to clarify the proposed exception from Rule 92 that would allow NYSE members or member organizations to trade along with a customer in the same security when the member or member organization engages in proprietary bona fide hedge transactions. Under the proposal, the creation of a bona fide hedge ("hedge") must occur so close in time to the completion of the transaction precipitating such hedge that the hedge is clearly related. A hedge will be deemed to be "clearly related" to the transaction precipitating the hedge if either the first or last transaction comprising the hedge is executed on the same trade date as the transaction that precipitates such hedge. In addition, the size of the hedge must be commensurate with the risk it offsets. The proposal also requires that the risk to be offset must result from a position acquired when the member or member organization facilitated a customer's order. Finally, the customer's order that the NYSE member or member organization trades along with must be for 10,000 shares or more.

The proposal also would permit NYSE members or member organizations to modify an existing hedge that was created to offset a position acquired in a customer facilitation transaction. The hedge, as modified, must remain commensurate with the risk it offsets, and the customer's order that the NYSE member or member organization trades along with must be for 10,000 shares or more.

b. Application of Rule 92 to Other Market Centers

The proposal prohibits NYSE members or member organizations from entering an order for their own or related accounts if the person entering the order has knowledge of a customer order capable of execution at the same price. Under Amendment No. 4 to the proposal, this prohibition would apply whether the trade for the customer or the NYSE member or member organization occurred on the Exchange or any other market center. Amendment No. 4 provides specific guidelines to help determine when Rule 92 would apply to proprietary or agency trades effected on another market center, including situations where neither segment nor "leg" of a customer

facilitation transaction occurred on the Exchange.

The Exchange seeks to further revise the proposed application of Rule 92. Specifically, the Exchange proposes to apply Rule 92 only in those situations where one or both trades (proprietary or agency) of a customer facilitation transaction are effected on the NYSE. If neither segment of a customer facilitation transaction occurs on the Exchange, Rule 92 would not apply.

c. Bona Fide Errors

The proposal also would permit NYSE members and member organizations to trade along with customers when effecting a transaction to correct a bona fide error.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act⁴ in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, protect investors and the public interest. The Exchange also believes that the proposed rule change will enable NYSE members and member organizations to add depth and liquidity to the Exchange's market, and help protect investors by requiring the express permission of customers in trading along situations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange did not solicit or received written comments with respect to the proposed rule change.

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 Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549-0609. Copies of the submissions, 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 persons, 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 Section, at 450 Fifth street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NYSE-94-34 and should be submitted by January 10, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42225; File No. SR-NYSE-99-38]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the New York Stock Exchange, Inc. to Amend its Minor Rule Violation Plan

December 13, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 2, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78f(b)(5).

Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. On November 12, 1999 the Exchange submitted Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would revise the "List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to NYSE Rule 476A" for imposition of fines for minor violations of rules by adding to the List failure to comply with the provisions of NYSE Rules 35, 345A and 440A.⁴ In addition, it proposes to clarify that paragraph (c) of currently listed NYSE Rule 472 encompasses telemarketing scripts. The Exchange believes it is appropriate to make the failure to comply with the provisions of the above-named rules subject to the possible imposition of a fine under NYSE Rule 476A procedures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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. The 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

NYSE Rule 476A provides that the Exchange may impose a fine (ranging from \$500 to \$2,500 for individuals and \$1,000 to \$5,000 for member organizations) 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 purpose of the NYSE Rule 476A procedure is to provide for 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 nature of the violation, or when the violation calls for a stronger regulatory response than a cautionary letter would convey. NYSE Rule 476A preserves due process rights, identifies those rule violations which may be the subject of summary fines, and includes a schedule of fines.

The Exchange wishes to emphasize the importance it places upon compliance with the rules addressed in this filing. Accordingly, the Exchange may, upon investigation, determination that a violation of any of these rules is of a minor nature and thus properly addressed by the procedures adopted under NYSE Rule 476A. However, in those instances where investigation reveals a more serious violation of these rules, the Exchange is prepared to provide an appropriate regulatory response which may include full disciplinary procedures available under NYSE Rule 476.

In SR-NYSE-84-27,⁵ which initially set forth the provisions and procedures of NYSE Rule 476A, the Exchange indicated it would amend the list of rules from time to time, as it considered appropriate, in order to phase-in the implementation of NYSE Rule 476A as experience with it was gained.

The Exchange is seeking approval to add to the List of Rules subject to possible imposition of fines under NYSE Rule 476A procedures failure by members or member organizations to comply with the provisions of: NYSE Rule 35 which requires that employees of members and member organizations be registered with, qualified by, and approved by the Exchange before being admitted to the Exchange Floor; NYSE Rule 345A which requires ongoing compliance with Continuing Education requirements; and NYSE Rule 440A which outlines certain telemarketing restrictions. In addition, the Exchange seeks to clarify that currently listed NYSE Rule 472(c), which addresses record retention requirements of certain public communications, encompasses telemarketing scripts.

The following outlines the proposed additions to the 476A list and includes

specific examples of NYSE Rule 476A violations;

(i) NYSE Rule 35 ("Floor Employees to be Registered")

- Failure of a Floor employee to take reasonable and appropriate steps to register with, become qualified by, and approved by the Exchange.
- Failure of a member or member organization to ensure that an employee admitted to the Floor of the Exchange has been registered with, qualified by, and approved by the Exchange. Specific violations may include:

(a) Failure of a member or member organization to submit a Floor employees' Form U-4 and/or fingerprint card;

(b) Failure of a member or member organization to ensure that a Floor employee has taken and passed appropriate qualification examinations and undergone required training.

For example, Trading Assistants (e.g., Post Clerks and Booth Clerks) are required to undergo 3 months of training and must take and pass the Trading Assistant Qualification Examination (Series 25) prior to performing the functions of a Trading Assistant on the Floor of the Exchange.

(ii) NYSE Rule 345A ("Continuing Education For Registered Persons") **Regulatory Element—Rule 345A(a)**

NYSE Rule 345A(a) addresses a member or member organization's responsibilities under the Regulatory Element of the Continuing Education program. The Regulatory Element requires that each registered person, not otherwise exempt from the rule, complete a prescribed computer-based training session within 120 days of the second anniversary of their initial registration date and every three years thereafter. Noncompliance with Regulatory Element requirements results in an individual's registration being deemed inactive until the person fulfills all applicable elements. Members and member organizations must ensure that such persons are not permitted to engage in, or be compensated for, activities requiring registration during this inactive registration period. Specific violations of 345A(a) subject to penalty under 476A include:

- Failure of a registered person to complete the continuing education requirements prescribed by NYSE Rule 345A(a).⁶
- Failure of a member or member organization to restrict the activities of a registered person who fails to comply with the continuing education

³ In Amendment No. 1, the Exchange made technical changes to the proposal. See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard C. Strasser, Assistant Director, Division of Market Regulation, Commission, dated November 10, 1999 ("Amendment No. 1").

⁴ In 1984, the Commission adopted amendments to Rule 19d-1(c) under the Act to allow self-regulatory organizations to submit, for Commission approval, plans for the abbreviated reporting of minor rule violations. See Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984).

⁵ See Securities Exchange Act Release No. 21688 (January 25, 1985), 50 FR 5025 (February 5, 1985).

⁶ See Amendment No. 1, *supra* note 3.

requirements prescribed by NYSE Rule 345A(a).

Firm Element—NYSE Rule 345A(b)

NYSE Rule 345A(b) addresses a member or member organization's responsibilities under the Firm Element of the Continuing Education program. The Firm Element requires that each member or member organization develop an analysis of their training needs and develop a written training plan, evaluated and updated annually, designed to enhance the securities knowledge, skill, and professionalism of certain "covered registered persons." "Covered registered persons" include any registered person who has direct contact with customers in the conduct of the member's or member organization's securities sale, trading or investment banking activities, and the immediate supervisors of such persons. At a minimum, the plan must take into consideration the member or member organization's size, organizational structure and scope of business activities, as well as registered persons' Regulatory Element performance.

Specific violations of NYSE Rule 345A(b) subject to penalty under NYSE Rule 476A include:

- Failure of a "covered registered person" to take appropriate and reasonable steps to participate in a continuing education program as prescribed by NYSE Rule 345A(b) (Firm Element).
- Failure of a member or member organization to adequately ensure that a "covered registered person" participates in a continuing education program prescribed by NYSE Rule 345A(b).
- Failure of a member or member organization to annually analyze their training needs as prescribed by NYSE Rule 345A(b) and to update their written training plan accordingly.
- Failure of a member or member organization to develop, administer, and maintain appropriate records for a written training plan as prescribed by NYSE Rule 345A(b).

(iii) NYSE Rule 440A ("Telephone Solicitation")

Violations subject to the provisions of 476A would include:

- Making a telephone call to the residence of a person for the purpose of soliciting the purchase of securities or related services at any time other than between 8 a.m. and 9 p.m. local time. [NYSE Rule 440A(a)]
- Making a telephone call to the residence of a person for the purpose of soliciting the purchase of securities or related services but failing to promptly and clearly disclose the identity of the

caller and member organization, the telephone number at which the caller may be contacted, and the purpose of the call. [NYSE Rule 440A(b)]

- Failure of a member or member organization to make and/or maintain a centralized list of persons who have informed the member, member organization or any employee thereof, that they do not wish to receive telephone solicitations. [NYSE Rule 440A(d)]
- Failure to obtain a customer's express written authorization on a negotiable instrument obtained from the customer as payment for the purchase of securities and/or to maintain such authorization for a period of three years. [NYSE Rule 440A(e)]

(iv) NYSE Rule 472 ("Communications with the Public")

NYSE Rule 472(c), which is currently on the NYSE Rule 476A Violations List, requires that certain communications with customers or the public be retained in accordance with NYSE Rule 440 ("Books and Records"). This requirement encompasses telemarketing scripts.

2. Statutory Basis

The Exchange represents that the proposed rule change will advance the objectives of Section 6(b)(6) of the Act⁷ in that it will provide a procedure whereby member organizations can be "appropriately disciplined" in those instances where a rule violation is minor in nature, but a sanction more serious than a warning or a cautionary letter is appropriate. The proposed rule change provides a fair procedure for imposing such sanctions, in accordance with the requirements of Sections 6(b)(7)⁸ and 6(d)(1)⁹ of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

⁷ 15 U.S.C. 78f(b)(6).

⁸ 15 U.S.C. 78f(b)(7).

⁹ 15 U.S.C. 78f(d)(1).

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

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. 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 will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-99-38 and should be submitted by January 10, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

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SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Comment Request

In compliance with Pub. L. 104-13, the Paperwork Reduction Act of 1995, SSA is providing notice of its

¹⁰ 17 CFR 200.30-3(a)(12).