

associated with a member, or any other fitting sanction.

*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.

**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 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 number SR-NYSE-2003-14 and should be submitted by July 2, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-47985; File No. SR-NYSE-2003-13]**

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend the Fine Schedule for Individuals and Member Organizations Who Commit Minor Rule Violations Under Rule 476A**

June 4, 2003.

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 April 28, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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**

The proposed rule change seeks to amend the fine schedule for individuals and member organizations who commit minor rule violations under NYSE Rule 476A.

**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 Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

<sup>5</sup> 17 CFR 200.30-3(a)(12).

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

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

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

**1. Purpose**

The purpose of NYSE Rule 476A is to provide an efficient and effective way by which the Exchange may encourage full compliance with NYSE rules by its members, member organizations, allied members, approved persons and registered and non-registered employees of member organizations. The rule permits the Exchange to impose a fine (not to exceed \$5,000), in lieu of commencing a disciplinary proceeding before a Hearing Panel, for a rule violation which the NYSE determines to be minor in nature, but which the NYSE nevertheless believes requires the imposition of a meaningful sanction. Fines imposed pursuant to NYSE Rule 476A are not required to be reflected on a member or member organization's Form BD.

The person against whom the fine is sought to be imposed under NYSE Rule 476A is served with a written statement indicating the specific rule that has been violated, the act or omission constituting the violation, and the fine. The written statement also indicates the date by which the fine must be paid, or the person must submit a written response contesting the Exchange's determination to impose the fine. If the person against whom a fine is sought to be imposed under NYSE Rule 476A chooses to contest the fine and submits a written answer within the time allowed, the matter becomes a "disciplinary proceeding" subject to NYSE Rule 476, including review by an Exchange Hearing Panel, with the usual right of appeal to the Board of Directors. The NYSE believes that the freedom of the person charged to contest the fine and seek a full hearing on the charges in accordance with established procedures provides that person with his full "due process" rights and prevents misuse of NYSE Rule 476A.

Currently, the fine schedule is as follows:

Fine amount	Individual	Member organization
First Time Fined ....	\$500	\$1,000
Second Time Fined ** .....	1,000	2,500
Subsequent Fines ** .....	2,500	5,000

\*\* Within a "rolling" 12-month period.

The purpose of the fine procedure is to deter violations of Exchange rules through the imposition of a meaningful sanction. The current fine schedule was

originally adopted in 1985,<sup>3</sup> and has not been revised since it was first introduced. The Exchange believes that it is appropriate at this time to increase the amounts of certain of the fines that may be imposed pursuant to NYSE Rule 476A to ensure that the fine program for minor rule violations continues to be a meaningful deterrent to violative behavior.

The NYSE is proposing to amend NYSE Rule 476A to establish only two levels of fines for member organizations by raising the first time fine for member organizations to \$2,500, and all subsequent fines to \$5,000. For individuals, the first fine would be \$1,000, the second fine would be \$2,500, and subsequent fines would be \$5,000.

The proposed schedule is as follows:

Fine amount	Individual
First Time Fined .....	\$1000
Second Time Fined** .....	2500
Subsequent Fines** .....	5000

  

Fine amount	Member organization
First Time Fined .....	2,500
Subsequent Fines** .....	5,000

\*\* Within a "rolling" 12-month period

The NYSE notes that the procedures authorized by NYSE Rule 476A are not mandatory. Under the rule, the Exchange may, in any case where it does not consider the rule violation to be minor, proceed to bring charges and commence a formal disciplinary proceeding under NYSE Rule 476.

## 2. Statutory Basis

The NYSE believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>4</sup> that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The NYSE further believes that the proposed rule will also advance the objectives of Section 6(b)(6)<sup>5</sup> of the Act in that it will permit Exchange members and persons associated with members to be "appropriately disciplined" for violation of Exchange rules. In addition, the Exchange believes that it also

supports Section 6(b)(7)<sup>6</sup> of the Act in that it provides a fair procedure for the disciplining of members and persons associated with members. Finally, the Exchange believes that it also advances the objectives of Section 6(b)(1)<sup>7</sup> of the Act in that it allows the Exchange to enforce compliance with its rules by its members and persons associated with members.

### 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.

### 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 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 number SR-NYSE-2003-13 and should be submitted by July 2, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47992; File No. SR-NYSE-2003-19]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Extend the Implementation Date To Establish a Six-Month Pilot Program Permitting a Floor Broker To Use an Exchange Authorized and Provided Portable Telephone on the Exchange Floor

June 5, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on May 27, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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

The Exchange proposes to extend the implementation date for the six-month pilot program that would permit a Floor broker to use an Exchange authorized and provided portable telephone on the Exchange Floor to begin no later than June 23, 2003, instead of on or about May 1, 2003, as originally adopted with the approval of SR-NYSE-2002-11.<sup>3</sup>

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<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. 47671 (April 11, 2003), 68 FR 19048 (April 17, 2003) ("Original Order").

<sup>3</sup> See Securities Exchange Act Release No. 22415 (Sept. 17, 1985), 50 FR 38600 (Sept. 23, 1985) (SR-NYSE-84-27).

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

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

<sup>6</sup> 15 U.S.C. 78f(b)(7).

<sup>7</sup> 15 U.S.C. 78f(b)(1).