

thereunder applicable to NSCC because the default or insolvency of any settling member potentially imposes burdens and costs on NSCC and all of its members and that the procedures described above are designed to reduce these burdens and costs.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

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

No written comments relating to the rule filing have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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 NSCC 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. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549. 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 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, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal office of NSCC. All submissions should

refer to the file number SR-NSCC-95-17 and should be submitted by April 2, 1996.

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

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-36927; File No. SR-NYSE-95-45]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Additions to "List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A"

March 5, 1996.

On December 28, 1995, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "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 revise the List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A ("476A List") to include NYSE Rule 476(a)(10) and certain provisions of NYSE Rule 95 and NYSE Rule 127. The NYSE also requested approval, under Rule 19d-1(c)(2), to amend its Rule 19d-1 Minor Rule Violation Enforcement and Reporting Plan ("MRVP") to include the items proposed for addition to the 476A List.³

The proposed rule change was published for comment in Securities Exchange Act Release No. 36756 (Jan. 22, 1996), 61 FR 2856 (Jan. 29, 1996). No comments were received on the proposal.

In 1984, the Commission adopted amendments to Rule 19d-1(c) to allow SROs to submit, for Commission approval, plans for the abbreviated reporting of minor rule violations.⁴ The

Commission, in adopting Rule 19d-1, attempted to balance the informational needs of the Commission against the reporting burdens of the SROs,⁵ and with paragraph (c) of Rule 19d-1 the Commission further attempted to reduce those reporting burdens by permitting, where immediate reporting was unnecessary, quarterly reporting of minor rule violations. Rule 19d-1(c), however, was intended to be limited to rules that can be adjudicated quickly and objectively.

In 1985, the Commission approved a NYSE plan for the abbreviated reporting of minor rule violations pursuant to Rule 19d-1(c). The NYSE MRVP, as embodied in NYSE Rule 476A, provides that the Exchange may designate violations of certain rules as minor rule violations. The Exchange may impose a fine, not to exceed \$5,000, on any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization for a violation of the delineated rules by issuing a citation with a specific penalty.⁶ Such person can either accept the penalty or request a full disciplinary hearing on the matter.⁷ The Exchange also retains the option of bringing violations of rules subject to NYSE Rule 476A to full disciplinary proceedings, and the Commission expects the Exchange to do so for egregious or repeated violations.

The NYSE currently is adding to the 476A List and MRVP: (1) misstatements or omissions of fact on any submission filed with the Exchange as provided in NYSE Rule 476(a)(10); (2) failure to comply with the requirements of NYSE Rule 95 with respect to its order identification requirements or prohibition of transactions by members on the Floor involving discretion; and

be considered "final" for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding \$2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies. By deeming unadjudicated minor violations as not final, the Commission permits the SRO to report violations on a periodic, rather than on an immediate, basis.

⁵ See Securities Exchange Act Release No. 13762 (July 8, 1977), 42 FR 35411 (July 14, 1977).

⁶ The List is contained in Supplementary Material to NYSE Rule 476A. As discussed *supra*, note 4, only those fines imposed that are not in excess of \$2,500 are subject to periodic reporting. Fines imposed pursuant to Rule 476A in excess of \$2,500 are deemed final and therefore must be reported immediately to the Commission consistent with the reporting requirements of Section 19(d)(1) of the Act.

⁷ As discussed *supra*, note 4, any sanction for which a full disciplinary hearing was requested or administrative remedies otherwise have been exhausted is considered final and must be reported immediately to the Commission consistent with the reporting requirements of Section 19(d)(1) of the Act.

¹¹ 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. § 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Daniel Parker Odell, Assistant Secretary, NYSE, to Glen Barrentine, Team Leader, Division of Market Regulation, SEC, dated December 27, 1995.

⁴ See Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984). Pursuant to paragraph (c)(1) of Rule 19d-1, an SRO is required to file promptly with the Commission notice of any final disciplinary action taken by the SRO. Pursuant to paragraph (c)(2) of Rule 19d-1, any disciplinary action taken by an SRO for a violation of an SRO rule that has been designated a minor rule violation pursuant to the Plan shall not

(3) failure to comply with certain procedures under NYSE Rule 127 for execution of block cross transactions at a price that is outside the NYSE best bid or offer.

Specifically, the Exchange is seeking to add to the 476A List misstatements or omissions of fact on applications for membership approval, financial statements, reports or other submissions filed with the Exchange in violation of NYSE Rule 476(a)(10). The Commission believes that violations of NYSE Rule 476(a)(10) are relatively objective and thus adding this rule to the MRVP is consistent with the Act. The Commission, however, is concerned about situations where false or misleading statements and omissions of material facts are willfully made that could cause an individual or entity to be subject to a statutory disqualification as defined in Section 3(a)(39)(F) of the Act. In such situations, procedures under Rule 476A would not be appropriate to address the conduct, and the Exchange should bring a full disciplinary proceeding for any such violation and notify the Commission immediately of any final action on the matter. In this regard, the Exchange has represented that it would be careful to distinguish misstatements or omissions of facts from willfully made false or misleading statements and omissions of material fact. Moreover, the Exchange has stated that in appropriate circumstances (*i.e.*, findings of a pattern of misstatements or omissions), the Exchange would not use the procedures under Rule 476A to address the conduct.

The Exchange also proposes to amend the Rule 476A List by adding NYSE Rule 95, which generally prohibits transactions that involve discretion as to (1) choice of security, (2) total amount of security to be bought or sold, or (3) whether a transaction is to be a purchase or sale. The Exchange is also seeking to add to the 476A List the failure to identify appropriately a liquidating order pursuant to NYSE Rule 95(c) (all liquidating orders effected pursuant to Rule 95(c) must be marked on the Floor as "BC" in the case of an order covering a short position or "SLQ" in the case of the sell order liquidating a long position). The Commission believes that violations of NYSE Rule 95 in these circumstances are relatively objective and thus adding these violations to the MRVP is consistent with the Act.

Finally, the Exchange is presently seeking approval to add to the 476A List the failure by members or member organizations to adhere to certain procedures under NYSE Rule 127 for execution of block cross transactions at

a price that is outside of the NYSE best bid or offer. Specifically, the failure to fulfill the requirement to satisfy public limit order at the clean up price when a position is established or increased for a member's or member organization's proprietary account would be considered a violation for which a fine pursuant to Rule 476A might be imposed.⁸ Moreover, the failure to utilize the procedures of NYSE Rule 127 to satisfy all better-priced limit orders when effecting block crosses outside the currently quoted market would also be considered a violation for which a fine pursuant to Rule 476A might be imposed. These specific violations of NYSE Rule 127 can be objectively determined and therefore the Commission believes that it is consistent with the Act to add these violations of NYSE Rule 127 to the 476A List and MRVP.

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, and, in particular, with the requirements of sections 6(b)(1), 6(b)(6), 6(b)(7), 6(d)(1) and 19(d) of the Act.⁹ The proposal is consistent with the Section 6(b)(6) requirement that the rules of an exchange provide that its members and persons associated with its members shall be disciplined appropriately for violations of rules of the exchange. The proposal provides an efficient procedure for appropriate disciplining of members for rule violations that are objective and technical in nature. Moreover, because NYSE Rule 476A provides procedural rights to the person fined and permits a disciplined person to request a full hearing on the matter, the proposal provides a fair procedure for the disciplining of members and persons associated with members, consistent with Section 6(b)(7) and 6(d)(1) of the Act.

The Commission also believes that the proposal provides an alternate means by which to deter violations of the NYSE rules included in the MRVP, thus furthering the purposes of Section 6(b)(1) of the Act. An exchange's ability to enforce effectively compliance by its members and member organizations with Commission and Exchange rules is central to its self-regulatory functions. Inclusion of a rule in an exchange's minor rule violation plan should not be

⁸ The Exchange has represented that it would not seek to review a member's initial determination as to whether the member would incur excessive stock loss by satisfying all orders at the clean-up price.

⁹ See 15 U.S.C. §§ 78f(b) (1), (6), (7), and (d)(1) and § 78s(d).

interpreted to mean it is an unimportant rule. On the contrary, the Commission recognizes that inclusion of rules under a minor rule violation plan may not only reduce reporting burdens on an SRO but also may make its disciplinary system more efficient in prosecuting violations of these rules.

Moreover, because the NYSE retains the discretion to bring a full disciplinary proceeding for any violation included on the 476A List, the Commission believes that adding the NYSE rules outlined above will enhance, rather than reduce, the NYSE's enforcement capabilities of these Exchange requirements. In this regard, the Commission expects the Exchange to bring full disciplinary proceedings if it determines that a violation otherwise covered by the MRVP is not minor in nature, in the event of repeated violations of a particular rule, or in any other appropriate circumstance. Finally, the Commission believes that subjecting violations of the above specified NYSE rules to Rule 476A procedures will prove to be an effective response when the initiation of a full disciplinary proceeding is unsuitable because such a proceeding may be more costly and time-consuming in view of the minor nature of the particular violation. By including these rules in the 476A List, the Exchange can quickly respond to violations, thereby immediately deterring similar infractions.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-NYSE-95-45) is approved.

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

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-36917; File No. SR-PSE-95-29]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Composition and Duties of the Options Allocation Committee

March 4, 1996.

I. Introduction

On November 15, 1995, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).