

using any facility or system which the NASD operates or controls.

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

Nasdaq does not believe that the proposed rule change, as amended, will result in 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*

Nasdaq states that written comments were neither solicited nor received.

### III. 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. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2005-049 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. All submissions should refer to File Number SR-NASD-2005-049. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 the filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does

not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2005-049 and should be submitted on or before May 27, 2005.

### IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a self-regulatory organization.<sup>7</sup> Specifically, the Commission believes the proposed rule change, as amended, is consistent with Section 15A(b)(5) of the Act,<sup>8</sup> which requires that the rules of the self-regulatory organization provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facilities or system which it operates or controls.

The Commission notes that this proposal, which permits the retroactive application of a routing fee for certain orders to buy or sell exchange-listed securities and a fee for certain limit orders delivered to the NYSE for non-NASD members to be effective as of April 11, 2005, would permit the schedule for non-NASD members to mirror the schedule applicable to NASD members that was effective as of April 11, 2005 pursuant to SR-NASD-2005-048.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day of the date of publication of notice thereof in the **Federal Register**. The Commission notes that the proposed fees for non-NASD members are identical to those in SR-NASD-2005-048, which implemented these fees for NASD members and which became effective as of April 11, 2005. The Commission notes that this change will promote consistency in Nasdaq's fee schedule by applying the same pricing schedule with the same date of effectiveness for both NASD members and non-NASD members. Therefore, the Commission finds that there is good cause, consistent with Section 19(b)(2) of the Act,<sup>9</sup> to approve the proposed rule change on an accelerated basis.

<sup>7</sup> The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78o-3(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (File No. SR-NASD-2005-049), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51622; File No. SR-NYSE-2005-29]

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

April 27, 2005.

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 25, 2005, the New York Stock Exchange, Inc. ("NYSE" or the "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 NYSE proposes to amend NYSE Rule 637 to delete NYSE Rule 637's reference to NYSE Rule 476A. The text of the proposed rule change is available on the NYSE's Web site (<http://www.nyse.com>), at the principal office of the NYSE, and at the Commission's Public Reference Room. The text of the proposed rule change also appears below. Deletions are bracketed.

#### Rule 637 Failure To Honor Award

Any member, allied member, registered representative or member organization who fails to honor an award of arbitrators appointed in accordance with these rules or who fails

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</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.

to honor an award of arbitrators rendered under the auspices of any other self-regulatory organization or pursuant to the rules applicable to securities disputes before the American Arbitration Association, shall be subject to disciplinary proceedings in accordance with Rule 476 [Rule 476A] or Article IX of the New York Stock Exchange Constitution and Rules.

## 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 Exchange 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.

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

#### 1. Purpose

Pursuant to current NYSE Rule 637, 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 disciplinary proceedings in accordance with NYSE Rule 476, NYSE Rule 476A<sup>3</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

<sup>3</sup> 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.

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>4</sup> the Exchange's management concluded that violations of NYSE Rule 637 are not properly remedied through disciplinary action pursuant to 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, as proposed herein.

#### 2. Statutory Basis

The proposed amendment to NYSE Rule 637 is consistent with Section 6(b) of the Act<sup>5</sup> in general and in particular furthers the requirements of Section 6(b)(6),<sup>6</sup> which requires the rules of the Exchange to provide that its members and persons associated with its members be appropriately disciplined for violation of Exchange rules by fitting sanction, in that it corrects a discrepancy between NYSE Rules 637 and 476A as to the appropriate sanction for violations of NYSE Rule 637.

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

The Exchange believes that the proposal would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

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

Written comments were neither solicited nor received.

## 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.

<sup>4</sup> The NYSE Represents that NYSE arbitration awards rarely remain unsatisfied.

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

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

## 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. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2005-29 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-NYSE-2005-29. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 Section. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2005-29 and should be submitted on or before May 27, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

J. Lynn Taylor,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51644; File Nos. SR-NYSE-2005-25; SR-NASD-2005-043]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes by the New York Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. Relating to an Exemption from the Research Analyst Qualification Examination for Certain Associated Persons Employed by Non-Member Foreign Affiliates Who Contribute to the Preparation of Member Research Reports

May 2, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 1, 2005, the New York Stock Exchange, Inc. ("NYSE" or the "Exchange") and the National Association of Securities Dealers, Inc. ("NASD"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes as described in Items I and II below, which Items have been prepared by the respective self-regulatory organizations.<sup>3</sup> The NYSE and NASD (the "SROs") have each filed the proposed rule changes as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(1) thereunder,<sup>5</sup> which renders the proposed rule changes effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

### I. Self-Regulatory Organizations' Statements of the Terms of Substance of the Proposed Rule Changes

The NYSE is filing with the Commission a proposed interpretation to NYSE Rule 344 to establish an exemption from the Research Analyst Qualification Examination Requirements for Certain Foreign Research Analysts.

Pursuant to the provisions of Section 19(b)(3) of the Act,<sup>6</sup> the NASD is filing with the Commission a proposed rule change to amend NASD Rule 1050 to create an exemption from the Research Analyst Qualification Examination (Series 86 and 87) for certain research analysts employed by foreign affiliates of a member who contribute to the preparation of a member's research reports. The proposed rule change also makes one non-substantive change to NASD Rule 1050 to correct a spelling error.

Below is the text of the proposed rule changes. Brackets indicate deletions; italics indicate additions.

#### A. NYSE's Proposed Rule Text

##### Interpretation

#### Rule 344 Research Analysts and Supervisory Analysts

/01 Research Analysts (No Change)

/02 Foreign Research Analysts Exemption

*The requirement that a research analyst as defined under NYSE Rule 344.10 must be registered with, qualified by and approved by the Exchange shall not apply where such analyst is an associated person of a member or member organization who is an employee of a non-member foreign affiliate of such member or member organization who contributes to the preparation of the member's or member organization's research reports ("foreign research analyst"), provided the following conditions are satisfied;*

- *The foreign research analyst resides and is employed in a jurisdiction that the NYSE has determined has registration and qualification requirements or other standards that reflect a recognition of principles that are consonant with NYSE Rule 344 and the research analyst conflicts of interest provisions pursuant to NYSE Rule 472;*

- *The foreign research analyst has satisfied all applicable registration and qualification requirements or other research-related standards in the jurisdictions in which the foreign research analyst resides and is employed;*

- *Members and member organizations have imposed on affiliates that employ foreign research analysts, and the foreign research analysts all research-related standards that the member or member organization imposes on its research reports and research analysts, including the provisions of NYSE Rule 472;*

- *Members, member organizations and their affiliates that distribute research reports partially or entirely prepared by a foreign research analyst must subject such research reports to pre-use review and approval by a supervisory analyst, as required by NYSE Rule 472;*

- *The annual attestation required under NYSE Rule 351(f) must include the global application of NYSE Rule 472 to foreign affiliates that employ foreign research analysts;*

- *In addition to the disclosure requirements of NYSE Rule 472, each research report must include a*

*disclosure on the front page stating that:*

- *"This research report has been prepared in whole or part by foreign research analysts who may be associated persons of the member or member organization. These research analysts are not registered/qualified as a research analyst with the NYSE and/or NASD, but instead have satisfied the registration/qualification requirements or other research-related standards of a foreign jurisdiction that have been recognized for these purposes by the NYSE and NASD."*

*Disclosure on the front page of each research report must identify:*

- (1) *Each affiliate contributing to the research report;*
- (2) *The location of such affiliate; and*
- (3) *The names of the foreign research analysts employed by each contributing affiliate.*

*The cover page must also contain general disclosure language describing the relationship between the contributing affiliates and the member or member organization.*

*The front page of the research report must also refer to a separate "Foreign Affiliate Disclosures" section (similar to the "Required Disclosure" section currently mandated by the NYSE and NASD under Rules 472 and 2711 respectively) located in close proximity to the "Required Disclosure" section.*

*In this disclosure section, the member or member organization must disclose the following:*

- (1) *Information on the nature of the affiliation with the affiliate;*
- (2) *Each affiliate's address; and*
- (3) *The primary regulator in the jurisdiction(s) in which each affiliate is located.*

<sup>7</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> On May 2, 2005, the NYSE filed with the Commission Amendment No. 1 to its proposed rule change which made technical corrections to the proposed rule text of the proposed rule change.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(1).

<sup>6</sup> 15 U.S.C. 78s(b)(3).