

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44135; File No. SR-NYSE-00-60]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the New York Stock Exchange, Inc. Amending NYSE Rule 416, Questionnaires and Reports

March 30, 2001.

On December 21, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with 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 amend NYSE Rule 416, Questionnaires and Reports. The proposed rule change was noticed in the **Federal Register** on February 2, 2001.³ No comments were received on the proposed rule change. This order approves the proposed rule change.

I. Description of the Proposal

NYSE Rule 415 authorizes the Exchange to require members and member organizations to submit prescribed information that the Exchange believes to be essential for the protection of investors and the public interest. The Rule has been used to require the periodic submittal of specific predefined financial, operational, and other information necessary for an effective evaluation of a member's or member organization's compliance with applicable rules and regulations. NYSE Rule 416 has also been used to prepare the membership for specific initiatives such as participation in Year 2000 testing and the conversion to decimalization.

To facilitate the participation of members and member organizations in an industry-wide regulatory initiative with respect to clearing firms, the Exchange has proposed an amendment to Rule 416 (Rule 416.20) that will give the Exchange broader authority to require members and member organizations to submit to the Exchange raw trading data, on their own behalf and on behalf of firms that introduce customer accounts to them pursuant to NYSE Rule 382 (Carrying Agreements). Pursuant to Rule 416.20 members may be required by the Exchange to submit such information on an ongoing basis

(e.g., daily, monthly, quarterly) and in such format as the Exchange may require.⁴ The Exchange, in conjunction with the Commission, the National Association of Securities Dealers Regulation, Inc., Securities Industry Association ("SIA"), several member organizations, and other securities industry representatives, has developed a broker-dealer reporting system intended to help identify potential sales practice violations, particularly those associated with low-priced microcap issues. The data that the Exchange collects for this reporting system, pursuant to proposed Rule 416.20, will be submitted to a processing center that will organize it according to exception parameters established by the Exchange and other self-regulatory organizations. The required data will initially include, among other data, various raw statistical data pertaining to cancelled trades. It is intended that additional data will be required at future dates. Once the reporting system is fully operational, it is expected that the trade information collected pursuant to this initiative will serve as an early warning system to "red flag" unusual trading patterns.

II. Discussion

The Commission finds that the proposed rule change is consistent with the provisions of section 6(b)(5) of the Act,⁵ which require, among other things, that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with respect to facilitating transactions in securities, 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.⁶ In particular, the Commission believes that Rule 416.20 will help to prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade because it authorizes the Exchange to require clearing members to submit trading data to be analyzed for indications of sales practice violations in connection with low-priced microcap issues. Furthermore, because Rule 416 authorizes the Exchange to require its clearing members to submit this information on their own behalf and on behalf of their introducing firms, the

Commission believes that the rule will broadly enable the Exchange to detect unusual trading patterns at an early stage and thereby better protect investors and the public interest from abusive sales practices.

III. Conclusion.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the act,⁷ that the proposed rule change (SR-NYSE-00-60) is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44141; File No. SR-NYSE-00-32]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Shareholder Approval of Stock Option Plans

March 30, 2001.

I. Introduction

On July 13, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with 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 extend the effectiveness of a pilot regarding the Exchange's shareholder approval policy with respect to stock option and similar plans. The proposed rule change was published for comment in the **Federal Register** on August 10, 2000.³ On August 15, 2000, the Commission extended the comment period until

¹ 15 U.S.C. 78s(b)(2).

² 17 CFR 200.30-3(a)(12).

³ 15 U.S.C. 78s(b)(1).

⁴ 17 CFR 240.19b-4.

⁵ Securities Exchange Act Release No. 43111 (August 2, 2000), 65 FR 49046 ("2000 Proposal"). In addition, the NYSE submitted a monitoring report that presented data regarding the use of the "broadly-based" exemption by NYSE-listed companies. See letter to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), SEC, from Catherine R. Kinney, Group Executive Vice President, Office of Chief Executive, NYSE, dated September 28, 2000 ("Pilot Monitoring Report"). This report is part of the public file and may be inspected at the Commission's Public Reference Room as well as the principle office of the NYSE.

⁴ The Exchange has represented that it anticipates requesting members and member organizations to submit raw data electronically.

⁵ 15 U.S.C. 78f(b)(5).

⁶ In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 43886 (January 25, 2001), 65 FR 8829 (February 2, 2001) (SR-NYSE-00-60).