

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52051; File No. SR-NYSE-2005-45)

July 18, 2005

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change to Amend NYSE Rule 80A (Index Arbitrage Trading Restrictions) to Calculate Limitations on Index Arbitrage Trading Based on the NYSE Composite Index, Replacing the Current Usage of the Dow Jones Industrial Average

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 June 28, 2005, 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 NYSE Rule 80A (“Index Arbitrage Trading Restrictions”) to calculate limitations on index arbitrage trading as provided in the rule based on the NYSE Composite Index (“NYA”), replacing the current usage of the Dow Jones Industrial Average (“DJIA”). The text of the proposed rule change is available on the NYSE’s Web site (www.NYSE.com), at the NYSE’s principal office, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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. 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

NYSE Rule 80A provides for limitations on index arbitrage trading in any component stock of the S&P 500 Stock Price Index ("S&P 500") on any day that the DJIA³ advances or declines at least 2%⁴ from its previous day's closing value. The Exchange is proposing to amend NYSE Rule 80A to base the collars on a 2% movement in the average closing value of the NYSE Composite Index[®]. The NYA is designed to measure the performance of all common stocks listed on the Exchange, including American depository receipts ("ADRs"), real estate investment trusts ("REITs") and tracking stocks. The base value of the NYA was recalculated on December 31, 2002 at 5,000. It closed at 7030.74 on April 19, 2005. The NYA represents 77% of the total market capitalization of all publicly traded companies in the U.S., and 64% of the total market capitalization of all publicly traded companies worldwide.

³ "Dow Jones Industrial Average" is a service mark of Dow Jones & Company, Inc.

⁴ NYSE Rule 80A provides that collars are based on a quarterly calculation of "two percent value," which is 2%, rounded down to the nearest ten points, of the average closing value of the DJIA for the last month of the previous calendar quarter.

NYSE Rule 80A affects index arbitrage orders entered in any component stock of the S&P 500 traded on the NYSE on any day that the DJIA experiences a price movement of 2% or more. If the market advances by 2% or more, all index arbitrage orders to buy must be stabilizing (buy minus); similarly, if the market declines by 2% or more, all index arbitrage orders to sell must be stabilizing (sell plus). The stabilizing requirements are removed if the DJIA moves back to or within 1% of its closing value.

The Exchange believes that the NYA is a better reflection of market activity with respect to the S&P 500 as there is a higher correlation between the NYA and the S&P 500 than there is between the DJIA and the S&P 500. In this regard, the stocks in the NYA include 86% of the total market capitalization of the companies in the S&P 500. The DJIA represents only 34%. The Exchange also believes that the NYA will continue to provide an appropriate measure of market volatility. A review of the NYSE Rule 80A collars during 2003 shows that the 2% DJIA collar was triggered 28 times. During this same period, using the NYA at 2% as the measure would have resulted in the collar being triggered 18 times. In 2004, the NYSE Rule 80A collars were not triggered at all, while the collar would have been triggered once using the NYA at 2%.

2. Statutory Basis

The NYSE believes the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)⁵ 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.

⁵ 15 U.S.C. 78f(b)(5).

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 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 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. Please include File Number SR-NYSE-2005-45 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-NYSE-2005-45. 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 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-2005-45 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Jill M. Peterson
Assistant Secretary

⁶ 17 CFR 200.30-3(a)(12).