

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53327; File No. SR-NYSE-2005-86)

February 16, 2006

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Conform NYSE Rules 123C and 476A with NYSE Rule 80A

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 December 7, 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. On February 9, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend: (a) NYSE Rule 123C (Market on the Close Policy and Expiration Procedures); and (b) the Supplementary Material to NYSE Rule 476A (Imposition of Fines for Minor Violation(s) of Rules), to conform such rules with the current provisions of NYSE Rule 80A (Index Arbitrage Trading Restrictions). The text of the proposed rule change is available on the Exchange’s Internet Web site (<http://www.nyse.com>), at the Exchange’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.

³ In Amendment No. 1, the Exchange made minor technical changes to the proposed rule text and revised the description of the proposal to clarify the general background of NYSE Rules 123C and 476A. Amendment No. 1 replaced NYSE’s original filing in its entirety.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Rules 123C(7) and 476A to conform these rules with the provisions of NYSE Rule 80A. The Exchange amended NYSE Rule 80A on two earlier occasions to: (i) revise the trigger levels for the “collar” provisions, among others;⁴ and (ii) replace the usage of the Dow Jones Industrial Average⁵ (“DJIA”) as the basis for the calculation of the limitations on index arbitrage trading with the average closing value of the NYSE Composite Index[®] (also referred to as NYA).⁶ NYSE Rules 123C(7) and 476A refer to the former provisions of NYSE Rule 80A and therefore must be conformed with NYSE Rule 80A, as amended.

⁴ See infra note 9.

⁵ “Dow Jones Industrial Average” is a service mark of Dow Jones & Company, Inc.

⁶ See Securities Exchange Act Release No. 52328 (August 24, 2005), 70 FR 51398 (August 30, 2005) (SR-NYSE-2005-45) (“NYSE Rule 80A Order”). NYSE Rule 80A currently calculates limitations on index arbitrage trading based on the NYSE Composite Index[®], replacing the previous usage of the DJIA with respect to such calculation.

NYSE Rule 80A currently requires that, for any component stock of the S&P 500[®] Stock Price Index,⁷ whenever the NYSE Composite Index[®] declines from the previous day's close by an amount greater than or equal to two percent calculated pursuant to NYSE Rule 80A, all index arbitrage orders to sell must be marked "sell plus," and, whenever the NYSE Composite Index[®] advances from the previous day's close by such amount, all index arbitrage orders to buy must be marked "buy minus." The value at which tick restrictions are imposed is calculated quarterly. The two-percent value is based upon the average closing value of the NYSE Composite Index[®] for the last month of the previous calendar quarter, rounded down to the nearest ten points.

(a) NYSE Rule 123C(7) Expiration Days: Exception to Rule 80A

NYSE Rule 123C(7) currently refers to the former provisions of NYSE Rule 80A, which utilized the DJIA to calculate the limitations on index arbitrage trading. The Exchange proposes to amend NYSE Rule 123C(7) to reflect the current provisions of NYSE Rule 80A, which applies the NYSE Composite Index[®] for such calculation. NYSE Rule 123C(7) should have been amended along with the amendments to NYSE Rule 80A in August 2005,⁸ but the Exchange inadvertently overlooked the amendment at that time.

NYSE Rule 123C(7) currently provides that when a market-on-close ("MOC") index arbitrage order to establish or increase a position is entered in any component stock of the S&P 500[®] Stock Price Index and NYSE Rule 80A subsequently goes into effect, the MOC order must be handled differently depending upon when NYSE Rule 80A goes into effect. The tick restrictions are determined at the time NYSE Rule 80A goes into effect under the various conditions that exist in the market at that time. However, NYSE Rule 123C(7) also indicates that

⁷ "Standard and Poor's 500 Stock Price Index" is a service mark of Standard and Poor's Corporation.

⁸ See NYSE Rule 80A Order, supra note 6.

NYSE Rule 80A's provisions, which relate to the entry of index arbitrage orders when the DJIA is up or down 2.0% from its previous day's closing value, do not apply to index arbitrage MOC orders "that are liquidating previously established stock positions against expiring derivative index products." The rule further provides that the two percent value is calculated at the beginning of each calendar quarter and is 2.0%, rounded down to the nearest 10 points, of the average closing value of the DJIA for the last month of the previous quarter. Further, the rule states that the NYSE Rule 80A exemption applies only on expiration days. Therefore, the orders that are entered before NYSE Rule 80A goes into effect cannot be cancelled between 3:40 p.m. and 3:50 p.m., except to correct a legitimate error or when a regulatory trading halt is in effect; after 3:50 p.m., cancellation or reduction in the size of MOC orders is not permitted for any reason.

(b) NYSE Rule 476A Imposition of Fines for Minor Violation(s) of Rules

NYSE Rule 476A specifically provides that a violation of the NYSE Rules is committed when NYSE Rule 80A(c) and (d) tick requirements are not in place for certain orders when the DJIA has moved 50 points from the previous close. However, as discussed above, NYSE Rule 80A has been amended to reflect the utilization of the NYSE Composite Index[®]. In addition, the current language in NYSE Rule 476A does not conform to the amendments to NYSE Rule 80A made by the Exchange in February 1999.⁹ Specifically, the Exchange amended, among others, NYSE Rule 80A's index arbitrage trigger, replacing the 50-point and 25-point limits with thresholds set at a two-percent value and a one-percent value of the DJIA.¹⁰ The Exchange

⁹ See Securities Exchange Act Release No. 41041 (February 11, 1999), 64 FR 8424 (February 19, 1999) (SR-NYSE-98-45).

¹⁰ See *id.* As discussed earlier, the DJIA was subsequently replaced by the NYSE Composite Index[®] by subsequent amendment to NYSE Rule 80A.

should have proposed to amend the provisions of NYSE Rule 476A when the NYSE Rule 80A arbitrage trigger was amended in 1999, but this amendment was inadvertently overlooked.

The Exchange proposes to amend NYSE Rule 476A to eliminate the specific reference to paragraphs (c) and (d), to refer instead to “order entry requirements,” to reflect the change to the utilization of the NYSE Composite Index[®], and to delete the portion of the rule referring to “50 points from the previous close” and replace it with the current trigger calculation, which is a two-percent value of the NYSE Composite Index[®].

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² in particular, in that it is designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and 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.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would 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

No written comments were solicited or received with respect to the proposed rule change.

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

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

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.

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-2005-86 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2005-86. 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, 100 F Street, NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices 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-2005-86 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.¹³

Nancy M. Morris
Secretary

¹³ 17 CFR 200.30-3(a)(12).