arbitrators. Although it is clear under NASD rules that persons who are registered through a broker or a dealer are associated persons of that broker-dealer, is this amendment helpful?

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–NASD–2005–094 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 20549–2001.

All submissions should refer to File Number SR–NASD–2005–094. 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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of 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 the File Number SR–NASD–2005–094 and should be submitted on or before September 20, 2005.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5–4726 Filed 8–29–05; 8:45 am]

**BILLING CODE 8010–01–P**

[11] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–52328; File No. SR–NYSE–2005–45]**

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving 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

August 24, 2005.

On June 28, 2005, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''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 80A (Index Arbitrage Trading Restrictions) relating to limitations on index arbitrage trading. The proposed rule change was published for comment in the **Federal Register** on July 25, 2005.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

Current NYSE Rule 80A provides for limitations on index arbitrage trading in any component stock of the S&P 500 Stock Price Index on any day that the Dow Jones Industrial Average (''DJIA'')[4] advances or declines at least 2%[5] from its previous day's closing value.[6] The NYSE proposes to amend NYSE Rule 80A to calculate the limitations on index arbitrage trading as provided in the rule based on the average closing value of the NYSE Composite Index® (''NYA''), replacing the current usage of the DJIA.

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[7] and, in particular, the requirements of Section 6 of the Act[8] and the rules and regulations thereunder. Specifically, the Commission finds the proposal to be consistent with Section 6(b)(5) of the Act,[9] in that it is 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. According to the Exchange, the NYA is a better reflection of market activity with respect to the S&P 500 and thus, a better indicator as to when the restrictions on index arbitrage trading provided by NYSE Rule 80A should be triggered. Therefore, the Commission believes that it is consistent with the Act for the NYSE to amend NYSE Rule 80A to calculate limitations on index arbitrage trading based on the NYA.[10]

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NYSE–2005–45) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5–4724 Filed 8–29–05; 8:45 am]

**BILLING CODE 8010–01–P**

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 52051 (July 18, 2005), 70 FR 42608.

[4] ''Dow Jones Industrial Average'' is a service mark of Dow Jones & Company, Inc.

[5] Current 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.

[6] NYSE Rule 80A's current limitations on index arbitrage trading provide that 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.

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] The Commission notes that approval of the proposed rule change is based, in part, on the fact that NYSE Rule 80A affects only certain types of trading by NYSE members trading on the floor of the Exchange. The rule's cross-market implications are minimal. The Commission, therefore, believes that the NYSE should have considerable discretion in determining which index to apply under this rule. The Commission's approval of the proposed rule change should in no way be interpreted as an indication that a similar change to NYSE Rule 80B (Trading Halts Due to Extraordinary Market Volatility), which is integral to the cross-market trading halt procedures known as ''Circuit Breakers,'' would be subject to the same analysis or similarly approved by the Commission.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

## UNITED STATES SENTENCING COMMISSION

### Sentencing Guidelines for United States Courts

**AGENCY:** United States Sentencing Commission.

**ACTION:** Notice of final priorities.