

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56726; File No. SR-NYSE-2007-96)

October 31, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 80A (Index Arbitrage Trading Restrictions)

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 October 25, 2007, the New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The NYSE filed the proposal pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders it effective upon filing with the Commission. 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 Exchange is proposing to rescind NYSE Rule 80A (Index Arbitrage Trading Restrictions) to eliminate order entry restrictions on certain index arbitrage orders entered on the Exchange. The text of the proposed rule change is available on the NYSE’s Web site (<http://www.nyse.com>), at the NYSE, and at the Commission’s Public Reference Room.

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

¹ 15 U.S.C.78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

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

The Exchange is proposing to rescind NYSE Rule 80A (Index Arbitrage Trading Restrictions) and thereby eliminate the “collar” provisions of the rule. Currently, NYSE Rule 80A(a) and (b) require that, for any component stock of the S&P 500 Stock Price IndexSM, whenever the NYSE Composite Index[®] (“NYA”)⁵ advances or declines by a predetermined value from its previous day’s closing value, all index arbitrage orders to buy or sell (depending on the direction of the move in the NYA) must be entered as either “buy minus” or “sell plus.”⁶ The tick restrictions are imposed based upon a “two-percent value” change in the NYA from its prior day’s closing value, where the “two-percent change” is two percent of the average closing value of the NYA for the last month of the previous calendar quarter, rounded down to the nearest ten points. The order entry conditions are lifted if the NYA recovers to within one percent of the previous day’s closing value, and can be reimposed if the average moves away by

⁵ The trigger values were originally based on movement in the value of the Dow Jones Industrial Average, but were changed in 2005. See Securities Exchange Act Release No. 52328 (August 24, 2005), 70 FR 51398 (August 30, 2005) (SR-NYSE-2005-45).

⁶ NYSE Rule 13 defines a “buy minus” order as an order to buy a stated amount of stock provided that the price to be obtained is not higher than the last sale if the last sale was a “minus” or “zero minus” tick, and is not higher than the last sale minus the minimum fractional change in the stock if the last sale was a “plus” or “zero plus” tick. A “sell plus” order is defined as an order to sell a stated amount of a stock provided that the price to be obtained is not lower than the last sale if the last sale was a “plus” or “zero plus” tick, and is not lower than the last sale plus the minimum fractional change in the stock if the last sale was a “minus” or “zero minus” tick.

two percent again during a trading session.

NYSE Rule 80A

NYSE states that NYSE Rule 80A was formulated as one of the responses to the market break of October 1987 to reduce market volatility and promote investor confidence.⁷ In its initial form, the rule used a measure of a 50 point move in the Dow Jones Industrial AverageSM to activate restrictions on order entry in S&P 500 stocks into Exchange systems.⁸ The restrictions were triggered on relatively few occasions throughout the early 1990s (for example, only 9 times in 1993), but were increasingly invoked as volatility heightened later in the decade (366 times in 1998). The basis for the restrictions calculation was changed in 1999 from 50 points to the two percent value discussed above.⁹ This had the effect of reining in the imposition of the restrictions; in fact, they were imposed only once during 2004-2005. They have been imposed 15 times so far in 2007.

The Exchange is making this change since it does not appear that the approach to market volatility envisioned by the use of these “collars” is as meaningful today as when the rule was formalized in the late 1980s. In the Exchange’s view, volatility is neither restrained nor enhanced by the imposition of the collars. It is as likely that markets will reverse trends whether or not Rule 80A is invoked. In addition, NYSE Rule 80A addresses only one type of trading strategy, namely index arbitrage, whereas the number and types of strategies have increased markedly in the last 20 years and may as well contribute to the increase in or lack of volatility.

⁷ Rule 80A was originally approved by the Commission in April 1988. See Securities Exchange Act Release No. 25599 (April 19, 1988), 53 FR 13371 (April 22, 1988) (SR-NYSE-88-02).

⁸ “Dow Jones Industrial Average” is a service mark of Dow Jones & Co., Inc.

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

Indeed, in approving the Exchange’s expansion of the collars to the two percent level in 1999, the Commission stated that “[i]t may make little sense to single out index arbitrage, which ensures that markets are aligned economically, from all other types of program trading.”¹⁰

As markets have continually and significantly evolved in the years since the original rule was adopted, similar regulatory constraints on trading have been removed. For example, earlier this year, the Commission ended price tick restrictions on short sales by removing Rule 10a-1,¹¹ a regulation adopted almost 70 years ago.¹² In doing so, the Commission discussed the practice of applying different price tests to trading in different securities and markets. This is true in NYSE Rule 80A as well since its tick restrictions apply only to index arbitrage orders in S&P 500 component stocks.

For these reasons, the Exchange believes it is appropriate to remove the order entry restrictions of NYSE Rule 80A.

Definitions in NYSE Rule 80A

Definitions in NYSE Rule 80A.40(a) and (b) for the terms “index arbitrage” and “program trading” are proposed to be repositioned in NYSE Rule 132B (Order Tracking Requirements) as they continue to be part of the Exchange’s regulatory agenda.¹³ The definition of “account of an individual investor” in NYSE Rule 80A.40(c) is proposed to be made part of NYSE Rule 92.40 as this rule currently refers to this definition in NYSE Rule 80A.

¹⁰ Id. at 8246.

¹¹ 17 CFR 240.10a-1.

¹² See Securities Exchange Act Release No. 55970 (June 28, 2007), 72 FR 36348 (July 3, 2007).

¹³ Earlier this year, the Exchange advised its member organizations of new reporting requirements for program trading activities, including index arbitrage activities. See NYSE Regulation Information Memo No. 07-52 (June 11, 2007). If the proposed relocation of the definitions of “index arbitrage” and “program trading” is approved, the Exchange will inform member organizations of these reporting obligations.

Other Rule Amendments

Conforming amendments to two other Exchange rules are proposed as a consequence of the proposed amendments to NYSE Rule 80A.

NYSE Rule 123C – This rule details the procedures for “market on close” (MOC) and “limit on close” (LOC) order entry, publication of imbalances and closing prints. Generally, MOC or LOC orders are not cancelable after 3:40 p.m., except to correct certain errors or to comply with the order entry requirements of NYSE Rule 80A, if the two percent collars are in effect. References to the NYSE Rule 80A provisions are proposed to be removed in Rule 123C (1) and (2).

NYSE Rule 123C(7) – This rule establishes procedures for exceptions to NYSE Rule 80A’s entry restrictions for MOC index arbitrage orders on so-called “expiration days”, i.e., the day when expiring stock and index option and futures products’ pricing is established, usually the third Friday of the month. It is proposed that this section be rescinded entirely.

NYSE Rule 476A – This rule establishes procedures to enable the Exchange to impose appropriate sanctions for less serious violations of Exchange rules. References to violations of NYSE Rule 80A contained in the list of rules subject to these procedures are proposed to be deleted.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act¹⁴ 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.

¹⁴ 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

Because the foregoing rule change does not: (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶

NYSE has requested that the Commission waive the 30-day operative delay.¹⁷ The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because rescission of NYSE Rule 80A would remove restrictions on index arbitrage, the appropriateness of which the Commission has previously

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii). Rule 19b-4(f)(6) also requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the five-day pre-filing requirement.

questioned.¹⁸ For this reason, the Commission designates the proposed rule change to be effective and operative upon filing with the Commission.¹⁹

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

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-2007-96 on the subject line.

Paper comments:

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

¹⁸ See Securities Exchange Act Release No. 41041, *supra* note 18, at 8426. There, the Commission also noted that it “may make little sense to single out index arbitrage, which ensures that markets are aligned economically, from all other types of program trading. Indeed, the restrictions on index arbitrage may tend to disconnect the securities and futures markets and impose unnecessary costs on market participants.” *Id.*

¹⁹ For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

All submissions should refer to File Number SR-NYSE-2007-96. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. 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-2007-96 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.²⁰

Florence E. Harmon
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).