Exchange is not proposing any substantive (or typographical) change to the pilot; rather, the Exchange proposes that the pilot remain in effect through January 31, 2006, the compliance date of Rule 612 of Regulation NMS.

2. Statutory Basis

CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[8] CHX believes the proposal is 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 to 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 changes would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

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

The Exchange asserts the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) [11] thereunder because the proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest.[12] The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change operative immediately so that the pilot can continue uninterrupted.

The Commission hereby grants the request.[13] The Commission believes that such waiver is consistent with the protection of investors and the public interest because it will allow the protection of customer limit orders provided by the pilot to continue without interruption and designates the proposed rule change to be operative upon filing with the Commission.

At any time within 60 days of the filing of the 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 No. SR–CHX–2005–22 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 No. SR–CHX–2005–22. 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 No. SR–CHX–2005–22 and should be submitted on or before September 20, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4723 Filed 8–29–05; 8:45 am]

BILLING CODE 8010–01–P

2002) (extending the pilot through January 31, 2003); 47372 (February 14, 2003), 68 FR 8955 (February 26, 2003) (extending the pilot through May 31, 2003); 47951 (May 30, 2003), 68 FR 34448 (June 9, 2003) (extending the pilot through December 1, 2003); 48871 (December 3, 2003), 68 FR 69097 (December 11, 2003) (extending pilot through June 30, 2004); 49994 (July 9, 2004), 69 FR 42486 (July 15, 2004) (extending pilot through June 30, 2005); 51944 (June 30, 2005), 70 FR 39539 (August 8, 2005) (extending pilot through August 29, 2005, the effective date of Rule 612).

[8] 15 U.S.C. 78f(b).

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

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] In addition, Rule 19b-4(f)(6)(iii) states that the Exchange must provide the Commission with written notice of its intent to file the proposed rule change at least five days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission. The Commission has determined to waive the requirement in this case.

[13] For 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).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52332; File No. SR–NASD–2005–094]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Amendments to the Classification of Arbitrators Pursuant to Rule 10308 of the NASD Code of Arbitration

August 24, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 22, 2005, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. On August 5, 2005, NASD filed amendment No. 1 to the

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

[2] 17 CFR 240.19b–4.

proposed rule.[3] 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

NASD is proposing to amend Rule 10308 of the NASD Code of Arbitration Procedure (''Code'') relating to the classification of arbitrators to further ensure that individuals with significant ties to the securities industry do not serve as public arbitrators. Below is the text of the proposed rule change.[4] Proposed new language is italics; proposed deletions are in brackets.

* * * * *

10308. Selection of Arbitrators

(a) Definitions

(1) through (3) No change

(4) ''non-public arbitrator''

The term ''non-public arbitrator'' means a person who is otherwise qualified to serve as an arbitrator and:

(A) is, or within the past 5 years, was:

(i) associated with*, including registered through,* a broker or a dealer (including a government securities broker or dealer or a municipal securities dealer);

(ii) registered under the Commodity Exchange Act;

(iii) a member of a commodities exchange or a registered futures association; or

(iv) associated with a person or firm registered under the Commodity Exchange Act;

(B) is retired from, or spent a substantial part of a career, engaging in any of the business activities listed in subparagraph (4)(A);

(C) is an attorney, accountant, or other professional who has devoted 20 percent or more of his or her professional work, in the last two years, to clients who are engaged in any of the business activities listed in subparagraph (4)(A); or

(D) is an employee of a bank or other financial institution and effects transactions in securities, including government or municipal securities, and commodities futures or options or supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities.

(5) ''public arbitrator''

(A) The term ''public arbitrator'' means a person who is otherwise qualified to serve as an arbitrator and:

(i) is not engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D);

(ii) was not engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D) for a total of 20 years or more;

(iii) is not an investment adviser;

(iv) is not an attorney, accountant, or other professional whose firm derived 10 percent or more of its annual revenue in the past 2 years from any persons or entities listed in paragraph (a)(4)(A); [and]

(v) *is not employed by, and is not the spouse or an immediate family member of a person who is employed by, an entity that directly or indirectly controls, is controlled by, or is under common control with, any partnership, corporation, or other organization that is engaged in the securities business;*

(vi) *is not a director or officer of, and is not the spouse or an immediate family member of a person who is a director or officer of, an entity that directly or indirectly controls, is controlled by, or is under common control with, any partnership, corporation, or other organization that is engaged in the securities business; and*

(*vii*) is not the spouse or an immediate family member of a person who is engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D).

(B) No change

(6) through (7) No change

(b) through (f) No change

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD 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. NASD 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 purpose of the proposed rule change is to amend the arbitrator classification criteria in Rule 10308 of the Code to ensure that individuals with significant ties to the securities industry may not serve as public arbitrators in NASD arbitrations.

The Code classifies arbitrators as public or non-public. When investors have a dispute with member firms or associated persons in NASD arbitration, they are entitled to have their cases heard by a panel consisting of either a single public arbitrator, or a majority public panel consisting of two public arbitrators and one non-public arbitrator, depending on the amount of the claim.[5]

Under Rule 10308(a)(4) of the Code, a person is classified as a non-public arbitrator if he or she:

(A) Is, or within the past 5 years, was:

(i) Associated with a broker or a dealer (including a government securities broker or dealer or a municipal securities dealer);

(ii) Registered under the Commodity Exchange Act;

(iii) A member of a commodities exchange or a registered futures association; or

(iv) Associated with a person or firm registered under the Commodity Exchange Act;

(B) Is retired from, or spent a substantial part of a career, engaging in any of the business activities listed in subparagraph (4)(A);

(C) Is an attorney, accountant, or other professional who has devoted 20 percent or more of his or her professional work, in the last two years, to clients who are engaged in any of the business activities listed in subparagraph (4)(A); or

(D) Is an employee of a bank or other financial institution and effects transactions in securities, including government or municipal securities, and commodities futures or options or supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities.

The criteria for public arbitrators are set forth in Rule 10308(a)(5) of the Code.

[3] The amendment clarified the rule's text and purpose, and revised the effective date of the rule.

[4] The rules proposed in this filing will be renumbered as appropriate following Commission approval of the pending revisions to the NASD Code of Arbitration Procedure for Customer Disputes; *see* Securities Exchange Act Release No. 51856 (June 15, 2005), 70 FR 36442 (June 23, 2005) (SR–NASD–2003–158); and the NASD Code of Arbitration Procedure for Industry Disputes; *see* Securities Exchange Act Release No. 51857 (June 15, 2005), 70 FR 36430 (June 23, 2005) (SR–NASD–2004–011).

[5] The panel composition for intra-industry disputes (not involving any parties who are investors) is governed by Rule 10202. Depending on the nature of the dispute, intra-industry panels may consists of all public arbitrators, all non-public arbitrators, or a majority of public arbitrators. The arbitrator classification provisions of Rule 10308 apply to all such panels.

In general, an individual will be classified as a public arbitrator if he or she is qualified to serve as an arbitrator and is not either personally engaged in certain activities that would make him or her non-public, or the immediate family member of a person engaged in such activities.

In order to ensure that individuals with significant ties to the securities industry may not serve as public arbitrators in NASD arbitrations, NASD believes that revisions to the definitions of public and non-public arbitrators are warranted.

NASD is proposing to amend the definition of public arbitrator to exclude individuals who work for, or are officers or directors of, an entity that controls, is controlled by, or is under common control with, a broker/dealer, or who have a spouse or immediate family member who works for, or is an officer or director of, an entity that is in such a control relationship with a broker/dealer. Currently, such individuals are not covered by the rule. For example, a person who works for a real estate firm that is under common control with a broker/dealer and perhaps shares the same corporate name may be classified as a public arbitrator under current rules. Since investors may feel that an arbitrator who is employed by a firm in such a control relationship with a broker/dealer is not truly ''public,'' NASD is proposing to revise the definition of public arbitrator to exclude any person who is employed by, or who has a spouse or an immediate family member who is employed by, an entity that directly or indirectly controls, is controlled by, or is under common control with, any partnership, corporation, or other organization that is engaged in the securities business.[6] Similarly, NASD also proposes to exclude from the definition of public arbitrator persons who are officers or directors of, or who have a spouse or an immediate family member who is an officer or director of, an entity in a control relationship with a broker/dealer.

In addition, NASD is proposing to revise the definition of non-public arbitrator to clarify that persons who are registered with a broker/dealer may not be classified as public arbitrators. Under current rules, arbitrators who are associated with a broker or dealer are considered non-public. In the financial services industry, it is not uncommon for a person to be employed by one company (such as a bank or insurance company) and to be registered to sell securities through another company (such as an affiliated broker/dealer). NASD believes that there may be some uncertainty among arbitrators who work for entities in a control relationship with a broker/dealer as to whether they are associated with a broker/dealer for purposes of Rule 10308, even though they hold licenses through the broker/dealer. Since the definition of ''person associated with a member'' in the NASD By-Laws includes persons who are registered with a broker/dealer, regardless of their status as employees, such persons should be considered non-public arbitrators. Therefore, NASD proposes to amend the definition of non-public arbitrator to specifically include anyone registered through a broker/dealer.[7]

NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 30 days following Commission approval. The effective date will be no later than 60 days following publication of the Notice to Members announcing Commission approval.[8]

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[9] in general, and with Section 15A(b)(6) of the Act,[10] in particular, which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that, by providing further assurance to parties that individuals with significant ties to the securities industry are not able to serve as public arbitrators in NASD arbitrations, the proposed rule change will enhance investor confidence in the fairness and neutrality of NASD's arbitration forum.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

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 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. The Commission particularly urges commenters to consider the proposed amendment to the definition of ''non-public arbitrator.'' Specifically, the NASD has proposed to amend Rule 10308(4)(A)(i) to clarify that persons ''associated'' with a broker or a dealer include persons ''registered through'' a broker or a dealer because there has been some uncertainty among certain

[6] For purposes of this rule, the term ''control'' has the same meaning that it has for purposes of Form BD, which broker/dealers use to register with NASD and to make periodic updates. Specifically, control is defined as ''The power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that (i) is a director, general partner or officer exercising executive responsibility (or having similar status or functions); (ii) directly or indirectly has the right to vote 25% or more of a class of a voting security or has the power to sell or direct the sale of 25% or more of a class of voting securities; or (iii) in the case of a partnership, has the right to receive upon dissolution, or has contributed, 25% or more of the capital, is presumed to control that company.'' *See* Uniform Application for Broker-Dealer Registration (Form BD).

[7] For purposes of Rule 10308(a)(4)(A)(i), the term ''including'' is expanding or illustrative, not exclusive or limiting. The use of the term ''including but not limited to'' in Rule 10321(d) of the Code is not intended to create a negative implication regarding the use of ''including'' without the term ''but not limited to'' in Rule 10308(a)(4)(A)(i) or other provisions of the Code.

[8] If an arbitrator's classification changes solely because of an amendment to the definitions in Rule 10308, the arbitrator's classification will be changed prospectively, that is, for future appointments only. In ongoing cases, staff will notify the parties of the prospective change in the arbitrator's classification. In such situations, because the arbitrator's classification was correct when the arbitrator was appointed, NASD normally will not grant challenges for cause based on a prospective change in classification. This provides continuity and avoids unnecessary disruption to ongoing cases. Challenges for cause still may be made based upon the disqualification and removal criteria in Rules 10308(d) and 10312(d).

[9] 15 U.S.C. 78o–3.

[10] 15 U.S.C. 78o–3(b)(6).

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.