

the underwriter to the MSRB would be similarly modified.

c. Submission of Official Statements to the MSRB Under Rule G-36

The original draft amendments to Rule G-36 published in the May 2004 Notice would have provided alternative timeframes for complying with the official statement submission requirements for primary offerings subject to SEC Rule 15c2-12, based on when the issues close. Thus, an underwriter would have been permitted to comply with Rule G-36 by sending the official statement to the MSRB by no later than five business days prior to the bond closing (or three business days prior to closing if submitted electronically through the e-OS System). Even if an underwriter were to fail to meet the proposed new timeframes, it would still comply with Rule G-36 if it met the original timeframe of ten business days after the sale date, but no later than one business day after receipt from the issuer, as provided under Rule G-36(b)(i). The original draft amendments were designed to promote the availability of official statements in the marketplace in advance of bond closing and to encourage the use of electronic means for disseminating official statements in a more timely and efficient manner while at the same time reducing the incidence of technical rule violations that did not raise investor protection concerns.

*Comments Received.* AMS supported the amendment, stating, "The idea of changing the requirement to define submission no later than five or three days prior to the settlement date as timely is appropriate." AMS also suggested eliminating the existing timeframe for compliance based on submission of official statements within 10 business days of the sale date.

Bandes stated it was against the rule, while BMA stated that, although it "applauds the MSRB's efforts to promote the availability of official statements in the marketplace," it suggested that the MSRB not amend Rule G-36 at this time. BMA stated that it is "concerned that these alternative timeframes will serve to frustrate good faith efforts to comply with Rule G-36" and believed that they would "cause unnecessary confusion amongst dealers." BMA further noted that "time periods between sale and issue dates appear to have been decreasing. It is not uncommon to have an issue date be the very day after the sale date, particularly for variable rate issues. Therefore the use of this proposed alternative

timeframe is likely to be low."<sup>19</sup> BMA concluded that "[t]he current uniform rule based on sale date covering both paper and electronic delivery of official statements is easier for compliance and audit purposes."

*MSRB Response.* The MSRB has determined not to take action on the original draft amendments to Rule G-36 at this time but will continue to closely monitor the official statement dissemination process.

### 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. 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](mailto:rule-comments@sec.gov). Please include File Number SR-MSRB-2005-13 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-MSRB-2005-13. 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

<sup>19</sup> The MSRB notes, however, that the original draft amendments to Rule G-36 would not have applied to many such variable rate issues, which are often exempt from SEC Rule 15c2-12 and therefore are governed by a different provision of Rule G-36. Instead, the rule proposal would have provided some relief for issues having extend settlement periods of other unusual features.

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 such filing also will be available for inspection and copying at the MSRB's offices. 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-MSRB-2005-13 and should be submitted on or before August 15, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

**Jonathan G. Katz,**  
*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52051; File No. SR-NYSE-2005-45]

### 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

July 18, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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

<sup>20</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 (<http://www.NYSE.com>), at the NYSE's principal office, 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 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 DJIA<sup>3</sup> advances or declines at least 2%<sup>4</sup> 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<sup>®</sup>. 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

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

<sup>4</sup> 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.

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.

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)<sup>5</sup> 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.

#### *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.

<sup>5</sup> 15 U.S.C. 78f(b)(5).

#### *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](mailto: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 August 15, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

Jill M. Peterson,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

Release No. 34-52060; File No. SR-PCX-2005-71]

### Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Relating to Complex Orders on the PCX Plus System

July 19, 2005.

#### I. Introduction

On June 7, 2005, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule to create a Complex Trading Engine ("CTE") to facilitate more automated handling of complex options orders. On June 14, 2005, the PCX submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on June 27, 2005.<sup>4</sup> The Commission received no comments regarding the proposal. This order

grants accelerated approval to the proposed rule change, as amended.

#### II. Description of the Proposed Rule Change

Complex options orders involve multiple options transactions that are executed simultaneously as part of a single strategy. The PCX currently routes complex orders to the Electronic Order Capture System ("EOC"), which is a function of the Floor Broker Hand Held System. Orders on the trading floor are announced by a Floor Broker to the trading crowd and trade in open outcry. As an enhancement to the PCX Plus system, the Exchange intends to develop a CTE, which will facilitate more automated handling of complex orders. Additionally, the Exchange proposes to adopt a separate complex order rule applicable solely to the PCX Plus system.<sup>5</sup>

Complex Orders on PCX Plus will route either to the EOC or the CTE, as determined by the Exchange.<sup>6</sup> Orders from public customers and registered broker-dealers are eligible to be routed to the CTE.<sup>7</sup> The PCX will announce routing decisions to OTP Holders and OTP Firms via Regulatory Bulletin.<sup>8</sup>

When a complex order routes to the EOC, the Floor Broker will announce the order to the trading crowd, which may trade with the order at its limit price or offer price improvement. If the trading crowd chooses not to trade with the order, the order will reside on the EOC or be entered into the CTE, at the Floor Broker's discretion. Any complex order represented by a Floor Broker will be subject to PCX Rule 6.46(a).<sup>9</sup>

When an order is routed directly into the CTE, the order may trade in one of three ways. First, if individual orders or quotes in the Exchange's consolidated book "line-up" against the legs of the complex order, an automatic execution occurs, provided the complex order can be executed in full (or in a permissible ratio) by the orders in the consolidated book. Second, if a subsequent incoming complex order is marketable against a resting complex order in the CTE, it will

<sup>5</sup> The following types of complex orders, as defined in PCX Rule 6.91(a), will be eligible for routing to the CTE: Spread orders; straddle orders; strangle orders; combination orders; ratio orders; butterfly spread orders; box/roll spread orders; and collar orders and risk reversals. Only complex orders with no more than four legs are eligible for the CTE. See PCX Rule 6.91(c)(4). Conversions and reversals will not be eligible for routing to the CTE. See PCX Rule 6.91, Commentary .01.

<sup>6</sup> See PCX Rule 6.91(c)(1).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> PCX Rule 6.46(a) requires a Floor Broker handling an order to use due diligence to execute the order at the best price or prices available to him, in accordance with the rules of the PCX.

automatically execute against the resting complex order in the CTE. Third, OTP Holders and OTP Firms will have the ability to view orders in the CTE and submit orders to trade against those orders.

A complex order in the CTE will be allocated to market participants in accordance with the allocation procedures described in PCX Rule 6.76(b). In addition, PCX Rule 6.76(c), which deals with crossing orders on PCX Plus, will apply to orders in the CTE.<sup>10</sup>

Complex orders resting in the CTE may be executed without consideration to the prices of the same complex orders that might be available on other exchanges.<sup>11</sup> Orders of public customers in the CTE will have priority over orders from non-public customers, and multiple public customer complex orders at the same price will be accorded priority based on time.<sup>12</sup>

PCX Rule 6.75(e) and PCX Rule 6.75, Commentary .04 generally allow a member holding a complex order to trade ahead of the book on one leg of the order, provided that the other leg of the order betters the corresponding bid (offer) in the consolidated order book. These rules will continue to apply to the trading of complex orders.

#### III. Discussion

The Commission has carefully reviewed the proposed rule change and finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>13</sup> In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,<sup>14</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and

<sup>10</sup> PCX Rule 6.76(c) prohibits an order entry firm from executing as principal against an order it represent as agent unless: (1) The agency order is first exposed on the Exchange for at least 30 seconds; (2) the PCX Broker utilizes the Crossing Mechanism pursuant to PCX Rule 6.76(c)(2); or (3) the PCX Broker executes the orders pursuant to PCX Rule 6.47.

<sup>11</sup> See PCX Rule 6.91(c)(2). The Options Price Reporting Authority does not disseminate complex order prices. This provision of the PCX's proposal is similar to International Securities Exchange Rule 722(b)(3) and CBOE Rule 6.53(c)(iii).

<sup>12</sup> See PCX Rule 6.76(a)(A).

<sup>13</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>6</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> In Amendment No. 1, the PCX revised Exhibit 5 to the proposal to add underscoring that was inadvertently deleted from the text of proposed PCX Rule 6.91(b).

<sup>4</sup> See Securities Exchange Act Release No. 51885 (June 20, 2005), 70 FR 36995.