

hearing, along with other matters referred to in this ruling.

Ordering Paragraphs

It Is Ordered:

1. The Commission establishes Docket No. MC2005-3 to consider the Postal Service Request referred to in the body of this order.

2. The Commission will sit en banc in this proceeding.

3. Postal Service counsel is appointed to serve as settlement coordinator in this proceeding. The Commission will make its hearing room available for a settlement conference on either August 8, 9, or 10, 2005, or at such times deemed necessary by the settlement coordinator.

4. Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate, is designated to represent the interests of the general public.

5. The deadline for filing notices of intervention is August 5, 2005.

6. A prehearing conference will be held August 11, 2005, at 10 a.m. in the Commission's hearing room.

7. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

Issued: July 19, 2005.

Dated: July 19, 2005.

By the Commission.

Steven W. Williams,
Secretary.

[FR Doc. 05-14594 Filed 7-22-05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52058; File No. SR-MSRB-2005-13]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to Official Statement Delivery Requirements Under Rule G-32, Rule G-36, and Rule G-11

July 19, 2005.

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 June 23, 2005, the Municipal Securities Rulemaking Board ("MSRB" or "Board") 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 the MSRB. 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 MSRB has filed with the SEC a proposed rule change consisting of amendments to Rule G-32 (on delivery of official statements to new issue customers), Rule G-36 (on delivery of official statements and advance refunding documents to the Board) and Rule G-11 (on new issue municipal securities during the underwriting period). The proposed rule change is intended to improve the efficiency of official statement dissemination in the municipal securities marketplace and the timeliness of official statement deliveries to customers. The text of the proposed rule change is available on the MSRB's Web site (<http://www.msrb.org>), at the MSRB'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 MSRB 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 MSRB 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 proposed rule change is designed to improve the efficiency and timeliness of dissemination of official statements to underwriters and other brokers, dealers, and municipal securities dealers ("dealers"), which in turn should also improve the efficiency and timeliness of dealer-to-customer dissemination of official statements. The proposed amendments are described more fully below.

Dissemination of Electronic Official Statements by Managing and Sole Underwriters

The proposed amendments establish new clause (i)(C) of Rule G-32(c), which requires the managing or sole

underwriter for new issues of municipal securities to provide a printable electronic version of the official statement (if an electronic version has been prepared and the issuer does not object to its distribution) to any dealer that requests an electronic version and provides an e-mail address or other delivery instructions acceptable to the managing or sole underwriter. This obligation is in addition to the managing or sole underwriter's obligation to send paper copies of the official statement in the required quantities (*i.e.*, one printed copy plus not less than one additional printed copy per \$100,000 par value purchased by the dealer for sale to customers). However, if the requesting dealer consents, the managing or sole underwriter is permitted to provide such dealer solely with the electronic official statement in lieu of paper copies otherwise required under the rule.³

The proposed rule change does not specify a particular file format for the electronic version of the official statement, other than that the electronic version be printable. Portable document format (PDF) files (and, in the future, any other file formats that it may hereafter accept for purposes of official statement submissions to the MSRB's web-based Electronic OS/ARD Submission System (the "e-OS System")) established under Rule G-36) are acceptable formats for purposes of the proposed rule change, so long as such files are printable. In addition, other file formats that are printable using commercially available software then in common usage in the municipal securities industry, or with software that is bundled with such files, also would be acceptable so long as the dealer that makes the delivery promptly delivers a substitute paper version of the official statement if the recipient of the electronic file so requests and a paper version has not previously been sent to such recipient.

The electronic version of the official statement must include every item of information included in the paper version. For example, if a dealer were to consent to receiving solely an electronic version of the official statement pursuant to clause (c)(i)(C) of Rule G-32 but portions of the official statement are not available in electronic form, a managing or sole underwriter could not discharge its obligation to deliver paper versions of the official statement under clause (c)(i)(A) by sending the portions

³ The managing or sole underwriter also need not provide the dealer with information on how to obtain additional copies of the official statement, as would otherwise be required under clause (i)(B) of Rule G-32(c), since such dealer will have agreed to rely exclusively on the printable electronic version.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

of the official statement available in electronic form and separately forwarding a paper copy of those portions not available in electronic form. In the case where the entire official statement is not available in electronic format, the requirement to disseminate an electronic version upon request under clauses (c)(ii) and (c)(i)(C) would not apply. The MSRB generally would view an electronic version of an official statement to be available only where the issuer has prepared, authorized and delivered the version as a single electronic file, or where multiple files delivered as a single unit are clearly interconnected by hyperlinks or other clear method of organization that ensures that an investor viewing one file would be put on adequate notice that additional accompanying files must be accessed in order to review the official statement in its entirety.

The proposed rule change also does not limit the manner of delivery of the electronic file. For example, the rule language permits the requesting dealer under clause (c)(i)(C) or an underwriter under clause (c)(ii) to provide an e-mail address or instructions for other forms of electronic delivery. An underwriter or dealer financial advisor should be able to meet this electronic delivery obligation in a number of different ways, including by posting the electronic version at an accessible Web site. At a minimum, any such form of passive delivery of the electronic version of the official statement must provide the recipient with timely notice that the official statement has been posted (e.g., by e-mail notice to the e-mail address provided by the requesting dealer), allow access to the document at no cost, permit the recipient to print and re-transmit the document (i.e., re-transmit a downloaded file of the document or permit the original recipient to forward to another dealer the information necessary to allow such other dealer to have access to the document equivalent to the access afforded to the original recipient), and ensure continued accessibility throughout the "new issue disclosure period" described below. The MSRB believes that best practice would entail transmission of the electronic version in a manner that would take advantage of the ability to make electronic files available substantially instantaneously or otherwise on demand, although certain technological limitations and variations among users would need to be taken into consideration in

determining the best method for disseminating a particular document.⁴

Dissemination of Electronic Official Statements by Financial Advisors

Revised Rule G-32(c)(ii) applies to any dealer that acts as the issuer's financial advisor and prepares the official statement for the issuer. If an electronic version of the official statement has been prepared and the issuer does not object to its distribution, the dealer financial advisor is required to make available to the managing or sole underwriter (in addition to a printed version of the official statement) a printable electronic version of the official statement, upon request by the underwriter for such an electronic version and if the underwriter provides an e-mail address or other delivery instructions acceptable to the dealer financial advisor. However, if the managing or sole underwriter consents, the dealer financial advisor is permitted to provide such underwriter solely with the electronic official statement in lieu of paper copies otherwise required under the rule.

Redefining the Time Period of Official Statement Dissemination

The proposed rule change deletes the definition of "underwriting period" in Rule G-32(d)(ii) and replaces it with the new term "new issue disclosure period." The new issue disclosure period is defined as the period commencing with the first submission to an underwriter of an order for the purchase of new issue municipal securities or the purchase of such securities from the issuer, whichever first occurs, and ending 25 days after the final delivery by the issuer of the securities to or through the underwriting syndicate or sole underwriter. The definition of "new issue municipal securities" in Rule G-32(d)(i) is revised to mean municipal securities (other than commercial paper) that are sold by a dealer during the issuer's new issue disclosure period.

The proposed rule change makes related changes to Rules G-36 and G-11. Clause (a)(iv) is added to Rule G-36 to include a reference to the definition of new issue disclosure period in Rule G-32(d)(ii), and section (d) of Rule G-36 is revised to provide that amendments to official statements made

by the issuer during the new issue disclosure period must be sent to the MSRB by the underwriter within the required timeframe. The definition of underwriting period is removed from section (a) of Rule G-11 and the title of the rule is revised to more accurately reflect the subject of the rule.

Clarifying Amendment to Rule G-36

The proposed rule change adds a definition of "underwriter" in new clause (a)(v) of Rule G-36, consisting of a cross-reference to the definition of that term provided in Rule 15c2-12 adopted by the SEC under the Act. The new language merely clarifies which definition applies to this term but does not change its meaning, since by virtue of Rule D-1,⁵ that term already has the same meaning as provided in Rule 15c2-12.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,⁶ which provides that the MSRB's rules shall:

be designed to prevent fraudulent and manipulative acts and practices, 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 municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change increases the efficiency of official statement dissemination in the marketplace and the timeliness of official statement deliveries to customers.

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

The MSRB does not believe that the proposed rule change will result in any burden on competition 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 MSRB published notices for comment on the draft amendments on May 12, 2004 (the "May 2004 Notice")⁷ and January 21, 2005 (the "January 2005

⁴ For example, some e-mail systems limit the size of files that users are permitted to receive, and some virus detection software settings can cause file attachments to e-mail messages to be deleted or quarantined. It would be the responsibility of a requesting dealer that provides an e-mail address for delivery of an electronic official statement by e-mail to ensure that its e-mail settings will permit any uninfected official statement file to be received.

⁵ Rule D-1 states that, unless the context otherwise specifically requires, the terms used in MSRB rules have the respective meanings set forth in the Act and the rules of the SEC thereunder.

⁶ 15 U.S.C. 78o-4(b)(2)(C).

⁷ MSRB Notice 2004-12 (May 12, 2004).

Notice”).⁸ The May 2004 Notice published for comment draft amendments to Rule G–32 and Rule G–36 (the “original draft amendments”). In response to the May 2004 Notice, the MSRB received four comment letters. After reviewing the comments received in connection with the May 2004 Notice, the January 2005 Notice published for comment revised draft amendments to Rules G–32 and G–36, as well as to Rule G–11 (the “revised draft amendments”). No comment letters were received in response to the January 2005 Notice. The language of the proposed rule change is identical to the language of the revised draft amendments, except that the proposed rule change also includes a clarifying amendment to Rule G–36(a)(v), as described above.

Discussion of Comments in Response to the May 2004 Notice

In response to the May 2004 Notice, the Board received comment letters from Jed Bades (“Bades”),⁹ Conners & Co., Inc. (“Conners”), American Municipal Securities, Inc. (“AMS”), and The Bond Market Association (“BMA”). Three commentators (Bades, Conners, and BMA) opposed the original draft amendments. The other commentator (AMS) did not state a position on most portions of the draft amendments but instead answers several questions posed in the notice. The comments are summarized and discussed below.

a. Dissemination of Electronic Official Statements Under Rule G–32

The original draft amendments published in the May 2004 Notice would have required managing or sole underwriters to provide copies of both the paper and electronic version of the official statement to any dealers purchasing new issue municipal securities that request copies of the official statement. The original draft amendments also would have required dealers acting as financial advisors that prepare official statements to provide to the underwriters both paper and electronic versions of the official statement. These obligations to provide electronic versions would arise only if an electronic version had been prepared and the issuer did not object to its distribution. These obligations would not have been conditioned on a request having been made to receive the official statement in electronic form.

Comments Received. Three commentators (Bades, Conners, and BMA) opposed these requirements. Conners stated that, as a small dealer underwriting issues for small issuers, requiring dissemination of electronic versions of the official statement in addition to paper copies would “make our costs unruly and would cut into our profits.” In addition, Conners stated that passing the cost on to the firm’s small issuer clients would be a burden. BMA also stated that the draft amendments would have been “unduly burdensome” to managing or sole underwriters. It observed that the MSRB’s 1998 notice on electronic delivery of documents (the “e-Document Notice”) ¹⁰ sets forth “strict requirements for effective electronic delivery to dealers, customers and issuers * * * [that are] more arduous than those for paper delivery, and require extra controls on electronic delivery such as tracking confirmation of receipt. Also, email addresses for all dealers are not readily accessible.” BMA suggested instead that electronic versions, if available, be required to be sent to a dealer only if the dealer specifically requests to receive one, in which case the requesting dealer can provide an e-mail address for delivery. It requested that the MSRB review the e-Document Notice “in light of technological advances in order to reduce the extra burdens on electronic delivery of documents over paper delivery and to further encourage use of electronic communications.”

BMA also stated that it is already the accepted practice for dealer financial advisors to provide electronic versions of official statements to the underwriters and that the MSRB should not impose a regulatory requirement to this effect. It further stated that such a requirement would create a new burden of “necessary recordkeeping for compliance purposes” without furthering the goals of the draft amendments.

MSRB Response. The MSRB observes that the proposed requirements would not have obligated any dealer to create an electronic version of the official statement but instead would have merely required the dissemination of any such electronic official statement already created by or on behalf of the issuer. As such, dealers would not have been burdened with costs of production, although some minimal costs may have been entailed with respect to the transmittal of such documents and with

ensuring that the sender’s method of transmittal was compatible with the recipient’s method of receipt, depending on the method chosen.

In addition, the MSRB notes that the e-Document Notice generally permits a dealer to fulfill a regulatory delivery obligation electronically if the dealer provides adequate notice of delivery, the electronic means provides access to information comparable to the paper version, and the dealer has reason to believe that electronic delivery will be effective. As noted in the e-Document Notice, this three-part requirement is not the only method by which legal delivery by electronic means can be accomplished. In particular, where MSRB rules provide different requirements for undertaking electronic communications, the e-Document Notice concluded that compliance with those rule-based requirements would satisfy the rule requirement even if the three-part test of the e-Document Notice is not fully met.

The MSRB believed that modifying the original draft amendments to require delivery to dealers of electronic official statements only if the dealer explicitly requests an electronic version would be an appropriate first step toward the ultimate goal of having electronic versions generally available and routinely used for more rapid dissemination of disclosure in the marketplace. The proposed rule change requires a requesting dealer to provide an e-mail address to which the electronic version could be sent or other instructions acceptable to the managing or sole underwriter for electronic delivery. Similarly, the MSRB believed that modifying the original draft amendments to require dealer financial advisors to provide to the underwriters electronic official statements only if the managing or sole underwriter explicitly requests an electronic version or provides an e-mail address or instructions acceptable to the dealer financial advisor for electronic delivery would be appropriate. Neither provision requires the dealer to create an electronic version for purposes of meeting these requirements if the issuer has not produced an electronic version.¹¹ In both cases, compliance with these provisions with the proposed rule change would fully satisfy the inter-dealer delivery requirement for purposes of the e-Document Notice.

Although the proposed rule change would permit the underwriter to forego

⁸ MSRB Notice 2005–06 (January 21, 2005).

⁹ Mr. Bades’s comment consists of an e-mail stating “I am against this rule” without further elaboration. It is unclear which firm he represents.

¹⁰ See Rule G–32 Interpretation—Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers (November 20, 1998), *reprinted in* MSRB Rule Book.

¹¹ In particular, where a dealer acting as financial advisor prepares an official statement on behalf of the issuer, the decision to produce an electronic version remains a matter for agreement between the issuer and the financial advisor.

delivering a paper version of the official statement to a dealer if the dealer consents, this provision would not affect the obligation of a dealer selling a new issue municipal security to a customer to deliver a paper copy of the official statement to the customer unless the dealer has taken the necessary steps described in the e-Document Notice in connection with the delivery of the electronic version to customers. Where delivery in paper form to a customer is required, the selling dealer would either need to obtain a paper copy of the official statement or would need to print a copy from its electronic version. Furthermore, the revised draft amendments also would permit a dealer financial advisor to make available solely an electronic version of the official statement to the managing or sole underwriter with such underwriter's consent. Underwriters that agree to receive only an electronic version of the official statement from the dealer financial advisor and that become obligated to deliver a paper version to another dealer or to a customer would need to print a copy from their electronic version.

The MSRB notes that the e-Document Notice was based on an interpretive release published by the SEC in 1996.¹² The e-Document Notice provided guidance on the use of electronic media to satisfy document delivery requirements under MSRB rules in a manner consistent with how other sectors of the securities markets handle delivery of required information through electronic media. The MSRB will take the request to review the e-Document Notice under advisement, particularly in light of the recent publication by the SEC of its securities offering reform proposal that includes significant modifications to the SEC's approach to the use of electronic media under its rules.¹³

b. Redefining the Time Period of Official Statement Dissemination

Under current Rule G-32, the underwriting period for a new issue generally ends when the underwriting syndicate (or the sole underwriter) has sold out the issue, but no earlier than the issuer's delivery of the issue to the underwriters. The duties imposed on dealers by current Rule G-32 (including but not limited to the obligation to deliver official statements to new issue customers) only extend to municipal securities sold during the underwriting

period. However, the duration the underwriting period may not be definitively known by most market participants since underwriters currently do not always inform the marketplace of when the issue has been sold out. The original draft amendments to Rule G-32 published in the May 2004 Notice would have included a new clause (i)(D) requiring the managing or sole underwriter of a new issue of municipal securities to inform promptly, upon request, any dealer purchasing such securities during the underwriting period and during the 60 days following the end of the underwriting period whether the underwriting period has ended. In the May 2004 Notice, the MSRB also sought comment on whether the original draft amendments should instead amend the definition of underwriting period to establish a fixed time period (e.g., 60 days after bond closing) during which the provisions of Rule G-32 apply.

Comments Received. Two commentators (AMS and BMA) agreed that a formulation based on a fixed number of days after the bond closing date would better achieve the goal of improved compliance.¹⁴ AMS stated that a period of 60 days after closing is appropriate. BMA suggested a time period of 30 days after the closing, noting that "[m]aking the end of the underwriting period a readily ascertainable date calculated from the issue date of the securities will not only make it easier for brokers, dealers and municipal securities dealers to ensure compliance with Rule G-32, but will also simplify audits on and enforcement of Rule G-32."

MSRB Response. The MSRB believes that establishing a fixed end date for the obligations arising under Rule G-32 would be appropriate since this would provide an unambiguous timeframe for delivery of new issue disclosures to customers. The proposed rule change would provide in Rule G-32(d)(ii) that this obligation would end 25 days after the final delivery by the issuer of new issue municipal securities to or through the underwriters.¹⁵

In conjunction with this change, the proposed rule change would discontinue the use of the term "underwriting period" under MSRB rules and replace it with the term "new issue disclosure period." This change would more clearly reflect the actual

usage of the term under MSRB rules and would help to eliminate certain ambiguities regarding the use of the term underwriting period within the municipal securities industry.¹⁶

Currently, the underwriting period is defined in two separate rules—Rules G-11 and G-32—depending upon whether there is a syndicate or a sole underwriter. The proposed rule change would delete the definition of underwriting period in Rule G-11(a)(ix)¹⁷ and would replace the definition of underwriting period in Rule G-32(d)(ii) with the new definition of new issue disclosure period. "New issue disclosure period" would mean the period commencing with the first submission to an underwriter of an order for the purchase of new issue municipal securities or the purchase of such securities from the issuer, whichever first occurs, and ending 25 days after the final delivery by the issuer of the securities of the issue to or through the underwriting syndicate or sole underwriter (i.e., 25 days after the closing).¹⁸ Rule G-36 would be amended to replace the current reference to underwriting period with a reference to the new issue disclosure period in section (d) and to add a cross-reference to the new definition in clause (a)(iv).

In virtually all cases, the newly defined "new issue disclosure period" would extend the period during which official statements are required to be delivered to customers beyond the period currently required under the existing definition of underwriting period. The amendment also would have an impact on the application of Rule G-36(d) in that the period during which stickers or amendments to official statements must be submitted by

¹⁶ For example, the term "end of the underwriting period" in SEC Rule 15c2-12(f)(2) has a different meaning for sole underwriters than under the definition of underwriting period in current Rule G-32(d)(B). In addition, the MSRB has learned that many market participants have come to use the term underwriting period to mean different aspects of the underwriting process unrelated to the use of this term under MSRB rules.

¹⁷ In addition, the title of Rule G-11 would be amended from "Sales of New Issue Municipal Securities During the Underwriting Period" to "New Issue Syndicate Practices."

¹⁸ The continuous nature of the offerings of municipal fund securities (e.g., interests in 529 college savings plans) would mean that no final delivery occurs so long as the issuer continues to offer such securities, resulting in all sales of municipal fund securities being treated as occurring during the new issue disclosure period. Thus, delivery of an official statement would be required for every sale of municipal fund securities under the revised draft amendments, just as is required under current Rule G-31. See Rule D-12 Interpretation—Interpretation Relating to Sales of Municipal Fund Securities in the Primary Market (January 18, 2001). *reprinted in* MSRB Rule Book.

¹² See Securities Act Release No. 7288 (May 9, 1996), 61 FR 24644 (May 15, 1996).

¹³ See Securities Act Release No. 8501 (November 3, 2004), 69 FR 67392 (November 17, 2004).

¹⁴ As noted above, Bandes simply stated that he was "against this rule" without elaboration.

¹⁵ The MSRB has proposed a 25-day period since this timeframe should coincide in most primary offerings to the period during which underwriters are required to send the final official statement to potential customers under SEC Rule 15c2-12(b)(4).

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."¹⁹ 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. 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

¹⁹ 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.²⁰

Jonathan G. Katz,
Secretary.

[FR Doc. E5-3944 Filed 7-22-05; 8:45 am]

BILLING CODE 8010-01-P

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"),¹ and Rule 19b-4 thereunder,² 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

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.