

NYSE Rule 476A specifically provides that a violation of the NYSE Rules is committed when NYSE Rule 80A(c) and (d) tick requirements are not in place for certain orders when the DJIA has moved 50 points from the previous close. However, as discussed above, NYSE Rule 80A has been amended to reflect the utilization of the NYSE Composite Index®. In addition, the current language in NYSE Rule 476A does not conform to the amendments to NYSE Rule 80A made by the Exchange in February 1999.<sup>9</sup> Specifically, the Exchange amended, among others, NYSE Rule 80A's index arbitrage trigger, replacing the 50-point and 25-point limits with thresholds set at a two-percent value and a one-percent value of the DJIA.<sup>10</sup> The Exchange should have proposed to amend the provisions of NYSE Rule 476A when the NYSE Rule 80A arbitrage trigger was amended in 1999, but this amendment was inadvertently overlooked.

The Exchange proposes to amend NYSE Rule 476A to eliminate the specific reference to paragraphs (c) and (d), to refer instead to "order entry requirements," to reflect the change to the utilization of the NYSE Composite Index®, and to delete the portion of the rule referring to "50 points from the previous close" and replace it with the current trigger calculation, which is a two-percent value of the NYSE Composite Index®.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>12</sup> in particular, in that it is designed 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 securities; 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 would 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

No written comments were solicited or received with respect to 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 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-NYSE-2005-86 on the subject line.

#### Paper Comments

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

All submissions should refer to File Number SR-NYSE-2005-86. 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 Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices 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-2005-86 and should be submitted on or before March 17, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Nancy M. Morris,**

*Secretary.*

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## SMALL BUSINESS ADMINISTRATION

### Small Business Size Standards: Waiver of the Nonmanufacturer Rule

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice of denial to waive the Nonmanufacturer Rule for Forklifts Manufacturing.

**SUMMARY:** The U.S. Small Business Administration (SBA) is denying a request for a waiver of the Nonmanufacturer Rule for Forklifts Manufacturing based on our recent discovery of a small business manufacturer for this class of products. Denying this waiver will require recipients of contracts set aside for small businesses, service-disabled veteran-owned small businesses, or SBA's 8(a) Business Development Program to provide the products of small business manufacturers or processors on such contracts.

**DATES:** This notice of denial is effective March 13, 2006.

**FOR FURTHER INFORMATION CONTACT:** Edith Butler, Program Analyst, by telephone at (202) 619-0422; by FAX at (202) 481-1788; or by e-mail at [edith.butler@sba.gov](mailto:edith.butler@sba.gov).

**SUPPLEMENTARY INFORMATION:** Section 8(a)(17) of the Small Business Act (Act),

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

<sup>10</sup> See *id.* As discussed earlier, the DJIA was subsequently replaced by the NYSE Composite Index® by subsequent amendment to NYSE Rule 80A.

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

15 U.S.C. 637(a)(17), requires that recipients of Federal contracts set aside for small businesses, service-disabled veteran-owned small businesses, or SBA's 8(a) Business Development Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule.

The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any "class of products" for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1202 (c), in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines "class of products" based on a six digit coding system. The coding system is the Office of Management and Budget North American Industry Classification System (NAICS).

The SBA received a request on October 3, 2005 to waive the Nonmanufacturer Rule for Forklifts Manufacturing. In response, on November 3, 2005, SBA published in the **Federal Register** a notice of intent to waive the Nonmanufacturer Rule for Forklifts Manufacturing. SBA explained in the notice that it was soliciting comments and sources of small business manufacturers of this class of products. In response to that November 3, 2005 notice, SBA received a comment from a small business manufacturer indicating that it has furnished this product to the Federal government. Accordingly, based on the available information, SBA has determined that there is a small business manufacturer of this class of products, and, is therefore denying the class waiver of the Nonmanufacturer Rule for Forklifts Manufacturing, NAICS 333924.

Dated: February 14, 2006.

**Karen C. Hontz,**

*Associate Administrator for Government Contracting.*

[FR Doc. E6-2653 Filed 2-23-06; 8:45 am]

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## **SMALL BUSINESS ADMINISTRATION**

### **Small Business Size Standards: Waiver of the Nonmanufacturer Rule**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice of intent to waive the Nonmanufacturer Rule for Furniture.

**SUMMARY:** The U.S. Small Business Administration (SBA) is considering granting a request for a waiver of the Nonmanufacturer Rule for Furniture (except drafting tables, hospital beds, medical furniture) Merchant Wholesalers; Office Furniture Merchant Wholesalers; Furniture (except wood), Office-Type, Padded, Upholstered, or Plain, Manufacturing; Furniture Design Services; Furniture Frames and Parts, Metal, Manufacturing; Furniture Frames, Wood, Manufacturing; Furniture Parts, Finished Metal, Manufacturing; Furniture Parts, Finished Plastics, Manufacturing; Furniture Parts, Finished Wood, Manufacturing; Furniture, Factory-type (e.g., cabinets, stools, tool stands, work benches), Manufacturing; Furniture, Hospital (e.g., hospital beds, operating room furniture), Manufacturing; and Furniture, Laboratory-type (e.g., benches, cabinets, stools, tables), Manufacturing. According to the request, no small business manufacturers are supplying this class of product to the Federal government. If granted, the waiver would allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses; service-disabled veteran-owned small business or SBA's 8(a) Business Development Program.

**DATES:** Comments and source information must be submitted by March 13, 2006.

**ADDRESSES:** You may submit comments and source information to Edith Butler, Program Analyst, U.S. Small Business Administration, Office of Government Contracting, 409 3rd Street, SW., Suite 8800, Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Edith Butler, Program Analyst, by telephone at (202) 619-0422; by FAX at (202) 481-1788; or by e-mail at [edith.butler@sba.gov](mailto:edith.butler@sba.gov).

**SUPPLEMENTARY INFORMATION:** Section 8(a)(17) of the Small Business Act (Act), 15 U.S.C. 637(a)(17), requires that recipients of Federal contracts set aside for small businesses, service-disabled veteran-owned small businesses, or SBA's 8(a) Business Development Program provide the product of a small

business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any "class of products" for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1202(c), in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines "class of products" based on a six digit coding systems.

The coding system is the Office of Management and Budget North American Industry Classification System (NAICS).

The SBA is currently processing a request to waive the Nonmanufacturer Rule for Furniture (except drafting tables, hospital beds, medical furniture) merchant wholesalers; Office Furniture Merchant Wholesalers; Furniture (except wood), Office-Type, Padded, Upholstered, or Plain, Manufacturing; Furniture Design Services; Furniture Frames and Parts, Metal, Manufacturing; Furniture Frames, Wood, Manufacturing; Furniture Parts, Finished Metal, Manufacturing; Furniture Parts, Finished Plastics, Manufacturing; Furniture Parts, Finished Wood, Manufacturing; Furniture, Factory-type (e.g., cabinets, stools, tool stands, work benches), Manufacturing; Furniture, Hospital (e.g., hospital beds, operating room furniture), Manufacturing; and Furniture, Laboratory-type (e.g., benches, cabinets, stools, tables), Manufacturing, North American Industry Classification System (NAICS) 423210. The public is invited to comment or provide source information to SBA on the proposed waiver of the Nonmanufacturer Rule for this class of NAICS code within 15 days after date of publication in the **Federal Register**.

Dated: February 14, 2006.

**Karen C. Hontz,**

*Associate Administrator for Government Contracting.*

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