

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58855; File No. SR-NYSEArca-2008-111)

October 24, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Proposing to Amend NYSE Arca Equities Rule 5.2(j)(6)(v) in Order to Add the CBOE Volatility Index® (VIX®) Futures (“VIX Futures”) to the Definition of Futures Reference Asset

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on October 17, 2008, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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

NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”), through its wholly-owned subsidiary, NYSE Arca Equities, Inc. (“NYSE Arca Equities” or the “Corporation”), is proposing to amend NYSE Arca Equities Rule 5.2(j)(6)(v) in order to add the CBOE Volatility Index® (VIX®) Futures (“VIX Futures”) to the definition of Futures Reference Asset. The text of the proposed rule change is available on the Exchange’s Web site at www.nyse.com, at the Exchange’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 self-regulatory organization included statements

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 those 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

Rule 19b-4(e)⁴ under the Securities Exchange Act of 1934 (“Act”)⁵ provides that the listing and trading of a new derivative securities product by a self-regulatory organization (“SRO”) shall not be deemed a proposed rule change, pursuant to section (c)(1) of Rule 19b-4,⁶ if the Commission has approved, pursuant to Section 19(b) of the Act,⁷ the SRO's trading rules, procedures, and listing standards for the product class including products linked to VIX Futures, and the SRO has a surveillance program for the product class.⁸

The Commission has approved the listing pursuant to NYSE Arca Equities Rule 5.2(j)(6), including listing pursuant to Rule 19b-4(e), of Index-Linked Securities, which term currently is defined in NYSE Arca Equities Rule 5.2(j)(6) to encompass Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked

⁴ 17 CFR 240.19b-4(e).

⁵ 17 U.S.C. 78a.

⁶ 17 CFR 240.19b-4(c)(1).

⁷ 15 U.S.C. 78s(b).

⁸ See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

Securities, Futures-Linked Securities and Multifactor Index-Linked Securities.⁹

The Exchange is proposing to amend its generic listing standards under amended NYSE Arca Equities Rule 5.2(j)(6) for Index-Linked Securities pursuant to which it will be able to trade securities linked to VIX Futures without Commission approval of each individual product pursuant to Section 19(b)(2) of the Act.¹⁰ Specifically, the Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(v) to add the VIX Futures as an underlying financial instrument of a Futures-Linked Securities and included VIX Futures within the definition of a futures reference asset. The Exchange represents that any securities it lists and/or trades pursuant to NYSE Arca Equities Rule 5.2(j)(6) will satisfy the standards set forth therein, and all applicable Exchange and Federal Securities rules. The Exchange states that within five business days after commencement of trading of an Index-Linked Security in reliance on NYSE Arca Equities Rule 5.2(j)(6), the Exchange will file a Form 19b-4(e).¹¹

The Commission has previously approved the listing and trading of options on the VIX.¹²

The VIX

The information in this filing relating to the VIX was taken from the Web site of the Chicago Board Options Exchange (the “CBOE”).

The VIX was originally developed by the CBOE in 1993 and was calculated using S&P 100® Index options. The current methodology for the VIX was introduced by the CBOE in

⁹ See Securities Exchange Act Release Nos. 56637 (October 10, 2007), 72 FR 58704 (October 16, 2007) (SR-NYSEArca-2007-92) and 57701 [sic] (March 14, 2008), 73 FR 15550 (March 24, 2008) (SR-NYSEArca-2008-20).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 240.19b-4(e)(2)(ii); 17 CFR 249.820.

¹² See Securities Exchange Release No. 48807 (November 19, 2003), 68 FR 66516 (November 26, 2003) (SR-CBOE-2003-40).

September 2003 and it is now an index that uses the quotes of certain S&P 500® Index (“SPX”) option series to derive a measure of the volatility of the U.S. equity market. The VIX measures market expectations of near term volatility conveyed by the prices of options on the SPX. It provides investors with up-to-the-minute market estimates of expected stock market volatility over the next 30 calendar days by extracting implied volatilities from real-time index option bid/ask quotes.

The VIX is calculated using put and call options on the SPX in the two nearest-term expiration months in order to bracket a 30-day calendar period. However, when there is 8 days left to expiration, the VIX “rolls” to the second and third contract months in order to minimize the pricing anomalies that might occur close to expiration.

For each contract month, CBOE will determine the at-the-money strike price. It will then select the at-the-money and out-of-the money series with non-zero bid prices and determine the midpoint of the bid-ask quote for each of these series. The midpoint quote of each series is then weighted so that the further away that series is from the at the-money strike, the less weight that is accorded to the quote. Then, to compute the index level, CBOE will calculate a volatility measure for the nearest term options and then for the next term options. This is done using the weighted mid-point of the prevailing bid-ask quotes for all included option series with the same expiration date. These volatility measures are then interpolated to arrive at a single, constant 30-day measure of volatility.

The CBOE will compute the index on a real-time basis throughout each trading day, from 8:30 AM until 3:15 PM (Chicago Time) CST. The CBOE has calculated historical index values for the new VIX back to 1986. VIX levels will be calculated by CBOE and disseminated at 15-

second intervals to market information vendors via the Options Price Reporting Authority (“OPRA”).

VIX Futures

Information regarding VIX Futures can be found on the Web site of the CBOE Futures Exchange (the “CFE”).

The CFE began listing and trading VIX Futures since March 26, 2004 under the ticker symbol VX. VIX Futures trade between the hours of 8:30 a.m. - 3:15 p.m. Central Time (Chicago Time). The CFE is a member of the Intermarket Surveillance Group (“ISG”)¹³.

The monthly volume and open interest, in USD, as of the last day of each of the last six months for the VIX Futures was as follows:

	Monthly Volume	Open Interest
Mar-08	\$266,990,096	\$2,621,925,695
Apr-08	220,242,675	2,539,855,183
May-08	214,255,026	2,574,362,763
Jun-08	210,130,373	2,506,392,108
Jul-08	216,902,870	2,476,056,292
Aug-08	\$254,239,715	\$2,113,750,676

The Exchange believes that the proposed criteria to add VIX Futures as an underlying Futures Reference asset will facilitate the listing and trading of additional Futures-Linked Security that will enhance competition among market participants, to the benefit of investors and the marketplace.

¹³ For a list of the current members and affiliate members of ISG, see www.isgportal.org.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)¹⁴ of the Act, in general, and furthers the objectives of Section 6(b)(5)¹⁵ in particular in that it is 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the listing and trading of additional Futures-Linked Security that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

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 Exchange consents, the Commission will:

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

- A. by order approve such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice of the filing thereof. The Commission has determined that a 15-day comment period is appropriate in this case.

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-NYSEArca-2008-111 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NYSEArca-2008-111. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies

of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. 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-NYSEArca-2008-111 and should be submitted on or before [insert date 15 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Florence E. Harmon
Acting Secretary

¹⁶ 17 CFR 200.30-3(a)(12).