

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58968; File No. SR-NYSEArca-2008-111)

November 17, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Accelerated Approval of Proposed Rule Change to Amend NYSE Arca Equities Rule 5.2(j)(6)(v) in Order to Add the CBOE Volatility Index<sup>®</sup> (“VIX<sup>®</sup>”) Futures (“VIX Futures”) to the Definition of Futures Reference Asset

On October 17, 2008, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder to amend NYSE Arca Equities Rule 5.2(j)(6)(v) to add the CBOE Volatility Index<sup>®</sup> (“VIX<sup>®</sup>”) Futures (“VIX Futures”) to the definition of “Futures Reference Asset.” The proposed rule change was published for comment in the Federal Register on October 30, 2008 for a 15-day comment period.<sup>3</sup> The Commission received no comment letters regarding the proposal. This order approves the proposed rule change.

The Commission has previously approved the listing and trading, pursuant to NYSE Arca Equities Rule 5.2(j)(6), including listing pursuant to Rule 19b-4(e) under the Act (“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 Securities, Futures-Linked Securities

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

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

<sup>3</sup> See Securities Exchange Act Release No. 58855 (October 24, 2008), 73 FR 64647 (“Notice”).

and Multifactor Index-Linked Securities.<sup>4</sup> 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 Security and include VIX Futures within the definition of a Futures Reference Asset.<sup>5</sup>

After careful consideration, 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<sup>6</sup> and, in particular, the requirements of Section 6 of the Act.<sup>7</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>8</sup> which requires, among other things, that the rules of a national securities exchange 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 facilitating transactions in securities, 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 Commission notes that it has previously approved NYSE Arca Equities Rule 5.2(j)(6) to list and trade Index-Linked Securities, including Futures-Linked Securities on the Exchange pursuant to Rule 19b-4(e).<sup>9</sup> The Exchange represented that any securities it would list

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<sup>4</sup> See Securities Exchange Act Release Nos. 56637 (October 10, 2007), 72 FR 58704 (October 16, 2007) (SR-NYSEArca-2007-92) and 57505 (March 14, 2008), 73 FR 15550 (March 24, 2008) (SR-NYSEArca-2008-20).

<sup>5</sup> For more details on the VIX and VIX Futures, see Notice, supra note 3.

<sup>6</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> See, supra, note 4.

and/or trade pursuant to proposed amended NYSE Arca Equities Rule 5.2(j)(6) would continue to comply with all Exchange rules applicable to the listing and trading of Index Linked Securities. Therefore, the Commission does not believe that the proposed rule change raises any novel regulatory issues and hereby approves the proposed rule change.

In addition, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the Federal Register. The Commission believes that accelerating approval of the proposed rule change would facilitate the listing and trading of additional Futures-Linked Securities, offering greater choices to market participants, while still protecting investors. For the reasons discussed above, the Commission does not believe that the proposed rule change raises any new regulatory issues.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-NYSEArca2008-111) is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

Florence E. Harmon  
Acting Secretary

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<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

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