

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60822; File No. SR-NYSEArca-2009-77)

October 14, 2009

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Amending NYSE Arca Options Rule 5.3(j)

On August 19, 2009, 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”)¹ and Rule 19b-4² thereunder to amend the definition of Futures Reference Asset in NYSE Arca Rule 5.3(j)(1)(E) to permit options on Futures-Linked Securities to be based on products linked to CBOE Volatility Index Futures (“VIX Futures”). The proposed rule change was published for comment in the Federal Register on September 11, 2009 for a 21-day comment period.³ The Commission received no comment letters regarding the proposal. This order approves the proposed rule change.

NYSE Arca Rule 5.3(j) designates the listing and trading of options on Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked securities, collectively known as Index-Linked Securities (as defined in NYSE Arca Equities Rule 5.2(j)(6)) that are principally traded on a national securities exchange and an “NMS Stock” (as defined in Rule 600 of Regulation NMS under the Act). Futures-Linked Securities pay at maturity an amount of cash based on the performance of a “Futures Reference Asset,” currently defined as an index of futures on Treasury Securities, GSE Securities, supranational debt and debt of a foreign

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 60621 (September 3, 2009), 74 FR 46818.

country or a subdivision thereof, or interest rate futures, or options or derivatives on any of the foregoing. The Exchange proposes to include VIX Futures in this definition.

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 exchange⁴ and, in particular, the requirements of Section 6 of the Act.⁵ Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁶ 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, 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.

Currently, the Exchange will consider listing and trading options on Index-Linked Securities, including options on Futures-Linked Securities, provided the Index-Linked Securities meet the criteria for underlying securities set forth in NYSE Arca Rule 5.3(a)-(b). Underlying Index-Linked Securities must meet the criteria and guidelines for underlying securities set forth in Rule 5.3(a); or the Index-Linked Securities must be redeemable at the option of the holder at least on a weekly basis through the issuer at a price related to the applicable underlying

⁴ 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).

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(5).

Reference Asset.⁷ After the addition of VIX Futures to the definition of a Futures Reference Asset in NYSE Arca Rule 5.3(j)(1)(E), options on Index-Linked Securities, including options on Futures Linked Securities, would continue to be subject to all Exchange rules governing the trading of equity options⁸ and the current continuing or maintenance listing standards applicable to the trading of options on Index-Linked Securities on NYSE Arca. The Commission also notes that it has previously approved an amendment to NYSE Arca Equities Rule 5.2(j)(6)(v) to add the VIX Futures to the definition of “Futures Reference Asset” for the listing and trading of Futures-Linked Securities.⁹

⁷ For purposes of NYSE Arca Rule 5.3(j), Reference Assets collectively refers to Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets, Futures Reference Assets, and Multifactor Reference Assets.

⁸ Despite the fact that Index-Linked Securities are linked to an underlying index, each trade as a single, exchange-listed security. Accordingly, rules pertaining to the listing and trading of standard equity options apply to options on Index-Linked Securities.

⁹ See Securities Exchange Act Release No. 58968 (November 17, 2008), 73 FR 71082 (November 24, 2008) (SR-NYSEArca-2008-111); see also Securities Exchange Act Release No. 60535 (August 19, 2009), 74 FR 46826 (August 26, 2009) (NYSEAmex-2009-55).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-NYSEArca-2009-77) is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon
Deputy Secretary

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).