

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-60535; File No. SR-NYSEAmex-2009-55)

August 19, 2009

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Amending Section 107(H) of the NYSE Amex Company Guide

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 10, 2009, NYSE Amex LLC (“NYSE Amex” 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 107(H) of the NYSE Amex Company Guide 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 attached as Exhibit 5 to the 19b-4 form. A copy of this filing is available on the Exchange’s Web site at [www.nyse.com](http://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 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

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

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

specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts 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)<sup>3</sup> under the Securities Exchange Act of 1934 (“Act”)<sup>4</sup> 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,<sup>5</sup> if the Commission has approved, pursuant to Section 19(b) of the Act,<sup>6</sup> the SRO’s trading rules, procedures, and listing standards for the product class that would include the new derivative securities product,<sup>7</sup> and the SRO has a surveillance program for the product class.<sup>8</sup> This proposal is substantially similar to the previously approved NYSE Arca Equities Rule 5.2(j)(6)(v).<sup>9</sup>

The Commission has approved the listing pursuant to Section 107(H) of the Amex Company Guide, including listing pursuant to Rule 19b-4(e), of Futures-Linked Securities.<sup>10</sup>

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<sup>3</sup> 17 CFR 240.19b-4(e).

<sup>4</sup> 17 U.S.C. 78a.

<sup>5</sup> 17 CFR 240.19b-4(c)(1).

<sup>6</sup> 15 U.S.C. 78s(b).

<sup>7</sup> E-mail from Timothy Malinowski, Director, NYSE Euronext, to Edward Cho, Special Counsel, Division of Trading and Markets, Commission, dated August 11, 2009 (“Exchange Confirmation”).

<sup>8</sup> See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) [sic].

<sup>9</sup> See Securities Exchange Act Release No. 34-58968 (November 17, 2008), 73 FR 64647 [sic] (SR-NYSEArca-2008-111).

<sup>10</sup> See Securities Exchange Act Release No. 34-57739 (April 30, 2008), 73 FR 25061 [sic] (SR-Amex-2008-17).

The Exchange is proposing to amend its generic listing standards under Section 107(H) of the NYSE Amex Company Guide<sup>11</sup> for Futures-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.<sup>12</sup> Specifically, the Exchange proposes to amend Section 107(H) of the NYSE Amex Company Guide to add the VIX Futures as an underlying financial instrument of Futures-Linked Securities and include VIX Futures within the definition of a Futures Reference Asset.<sup>13</sup> The Exchange represents that any securities it lists and/or trades pursuant to Section 107(H) of the NYSE Amex Company Guide 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 a Futures-Linked Security in reliance on Section 107(H) of the NYSE Amex Company Guide, the Exchange will file a Form 19b-4(e).<sup>14</sup>

The Commission has previously approved the listing and trading of options on the VIX.<sup>15</sup>

a. 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 September 2003 and it is now an index that uses the quotes of certain S&P 500® Index (“SPX”)

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<sup>11</sup> See Exchange Confirmation, supra note 7.

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> See Exchange Confirmation, supra note 7.

<sup>14</sup> 17 CFR 240.19b-4(e)(2)(ii); 17 CFR 249.820.

<sup>15</sup> See Securities Exchange Release No. 48807 (November 19, 2003), 68 FR 66516 (November 26, 2003) (SR-CBOE-2003-40).

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.

b. 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”).<sup>16</sup>

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.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>17</sup> of the Act in general, and furthers the objectives of Section 6(b)(5)<sup>18</sup> 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

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<sup>16</sup> For a list of the current members and affiliate members of ISG, see [www.isgportal.org](http://www.isgportal.org).

<sup>17</sup> 15 U.S.C. 78f(b).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

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. 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-NYSEAmex-2009-55 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEAmex-2009-55. 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 such 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 publicly available. All submissions should refer to File Number SR-NYSEAmex-2009-55 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

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>19</sup> In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act<sup>20</sup> 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 regulating, clearing, settling, processing

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<sup>19</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>20</sup> 15 U.S.C. 78f(b)(5).

information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest. The Commission notes that it has previously approved a proposal submitted by another exchange to similarly include VIX Futures as a Futures Reference Asset underlying Futures-Linked Securities.<sup>21</sup>

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>22</sup> for approving the proposed rule change prior to the 30th day after the date of publication of notice in the Federal Register. The Commission believes that the Exchange's proposal to add VIX Futures in the definition of Futures Reference Asset under Section 107(H) of the NYSE Amex Company Guide does not present any novel or significant regulatory issues. The Commission believes that accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for Futures-Linked Securities based on VIX Futures.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>23</sup> that the

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<sup>21</sup> See supra note 9. See also NYSE Arca Equities Rule 5.2(j)(6)(v).

<sup>22</sup> 15 U.S.C. 78s(b)(2).

<sup>23</sup> 15 U.S.C. 78s(b)(2).

proposed rule change (SR-NYSEAmex-2009-55) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>24</sup> 17 CFR 200.30-3(a)(12).