

Act³⁹ which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, 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.

The Commission also finds that proposed NYSE Arca Temporary Rule 6.96, which facilitates the participation of certain Participating Options Exchanges who may require the use of P/A Orders and Principal Orders after implementation of the Plan, is consistent with the Act. Although the Commission has already approved the Plan,⁴⁰ the Commission also recognizes that there may be one or more Participating Options Exchanges that may require a temporary transition period during which they may want to continue to utilize these order types that exist currently under the Old Plan.⁴¹ The Exchange and each of the other Participating Options Exchanges have proposed substantially identical temporary provisions to accommodate this possibility.⁴² Thus, the Commission finds that the proposed rule relating to the Exchange's receipt and handling of P/A Orders and Principal Orders, and imposing certain obligations on the Exchange with respect to such orders that are similar to those that exist under the Old Plan, is appropriate and consistent with Section 6(b)(5) of the Act⁴³ which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, 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.

Finally, the Commission finds that NYSE Arca's other proposed changes, including the proposed modifications to NYSE Arca Rule 6.33, Commentary .02-.04 to NYSE Arca Rule 6.35, NYSE Arca Rule 6.76.A, and NYSE Arca Rule 10.12 are appropriate and consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁴⁴ that the proposed rule change (SR-NYSEArca-2009-45), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁵

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60535; File No. SR-NYSEAmex-2009-55]

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

August 19, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² 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 <http://www.nyse.com>, at the Exchange's principal office and at the Commission's Public Reference Room.

⁴⁴ 15 U.S.C. 78s(b)(2).

⁴⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 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)³ under the Securities Exchange Act of 1934 ("Act")⁴ 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-4,⁵ if the Commission has approved, pursuant to Section 19(b) of the Act,⁶ the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product,⁷ and the SRO has a surveillance program for the product class.⁸ This proposal is substantially similar to the previously approved NYSE Arca Equities Rule 5.2(j)(6)(v).⁹

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.¹⁰

The Exchange is proposing to amend its generic listing standards under Section 107(H) of the NYSE Amex Company Guide¹¹ 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

³ 17 CFR 240.19b-4(e).

⁴ 17 U.S.C. 78a.

⁵ 17 CFR 240.19b-4(c)(1).

⁶ 15 U.S.C. 78s(b).

⁷ 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").

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

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

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

¹¹ See Exchange Confirmation, *supra* note 7.

³⁹ 15 U.S.C. 78f(b)(5).

⁴⁰ See Plan Approval, *supra*, note 5.

⁴¹ The Commission notes that any Participating Options Exchange that wishes to utilize such order types in a manner that would result in a Trade-Through would need to separately request an exemption from the Plan for such use.

⁴² The Commission notes that the rules contained in NYSE Arca Temporary Rule 6.96 are not required by the Plan, but rather are rules proposed by the Exchange in order to facilitate the participation in the Plan of certain exchanges during an initial transition period.

⁴³ 15 U.S.C. 78f(b)(5).

Section 19(b)(2) of the Act.¹²

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.¹³ 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).¹⁴

The Commission has previously approved the listing and trading of options on the VIX.¹⁵

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") 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").¹⁶

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) ¹⁷ of the Act in general, and furthers the objectives of Section 6(b)(5) ¹⁸ 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. 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-NYSEAmex-2009-55 on the subject line.

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

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 a.m. and 3 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 September 16, 2009.

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.¹⁹ In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act ²⁰ 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,

¹⁹ 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).

²⁰ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78s(b)(2).

¹³ See Exchange Confirmation, *supra* note 7.

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

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

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

settling, processing 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.²¹

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,²² 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,²³ that the 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.²⁴

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-20539 Filed 8-25-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60546; File No. SR-NASDAQ-2009-058]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change To Modify Port Fees

August 20, 2009.

On June 24, 2009, The NASDAQ Stock Market LLC ("NASDAQ") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule

19b-4 thereunder,² a proposed rule change to modify fees charged to members and non-members for ports used to enter orders into NASDAQ systems. The proposed rule change was published for comment in the **Federal Register** on July 16, 2009.³ The Commission received no comments regarding the proposal.

NASDAQ proposes to increase the monthly fee that it charges for ports used to enter orders in NASDAQ trading systems such as the NASDAQ Market Center and the NASDAQ Options Market. The change, which would increase the charge from \$400 to \$500 per month, would apply to ports using FIX, RASH, and OUCH and would not affect ports used to receive market data, to enter quotes, or to enter trade reports into the FINRA/NASDAQ Trade Reporting Facility. The change would apply to both members that obtain ports for direct access and non-member service bureaus that act as a conduit for orders entered by NASDAQ members that are their customers.

NASDAQ also proposes to modify the language of Rule 7015 to make it clear that access service fees apply to access provided to all NASDAQ-operated systems, to replace references to NASD with references to FINRA, and remove obsolete language regarding a trial discount that ended in 2007. In addition, NASDAQ proposes to remove language regarding the applicability of the rule to members and non-members. NASDAQ believes that such language is unnecessary and potentially confusing to the reader.

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(b) of the Act⁵ and the rules and regulations thereunder. Specifically, the Commission finds that the proposal to increase the fee that it charges for ports used to enter orders in NASDAQ trading systems is consistent with Section 6(b)(4) of the Act,⁶ which requires the equitable allocation of reasonable dues, fees, and other charges among NASDAQ members and other persons using

NASDAQ's facilities.⁷ The Commission believes that the proposed increase in port fees is equitably allocated among members and non-members, as it is based on the number of access ports that they use to submit orders to the market. The Commission also believes that, if NASDAQ's proposed port fees are set too high, given the competitive nature of the market for execution and routing services, market participants could simply opt to connect with market centers other than NASDAQ to access liquidity available on NASDAQ by directing order flow to the other market centers that are required to route to NASDAQ if it has posted the best available price. As such, the Commission believes that NASDAQ's proposed increase in port fees is both equitably allocated and reasonable.

In addition, the Commission believes that the clarifying changes to Rule 7015 are consistent with the requirements of Section 6(b)(5) of the Act,⁸ which requires, among other things, that NASDAQ's rules be designed to promote just and equitable principles of trade, 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. The Commission believes that updating and removing certain outdated or unnecessary references in Rule 7015 would provide additional clarity to the rule text, for the benefit of market participants accessing NASDAQ's facilities and the marketplace as a whole.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-NASDAQ-2009-058) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon,

Deputy Secretary.

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²¹ See *supra* note 9. See also NYSE Arca Equities Rule 5.2(j)(6)(v).

²² 15 U.S.C. 78s(b)(2).

²³ 15 U.S.C. 78s(b)(2).

²⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 60265 (July 8, 2009), 74 FR 34613 ("Notice").

⁴ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

⁷ The Commission notes that NASDAQ will implement the increased port fees September 1, 2009. See Notice, *supra* note 3.

⁸ 17 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).