

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.<sup>3</sup> The Commission received no comment letters regarding the proposal. This order approves the proposed rule change.

Commentary .11 to NYSE Amex Rule 915 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 Amex Company Guide Section 107(H)) 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 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 exchange<sup>4</sup> and, in particular, the requirements of Section 6 of the Act.<sup>5</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>6</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, 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 Commentary .01 to NYSE Amex Rule 915. Underlying Index-Linked Securities must meet the criteria and guidelines for underlying securities set forth in Commentary .01 to NYSE Amex Rule 915; 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 Reference Asset.<sup>7</sup> After the addition of VIX Futures to the definition of a Futures Reference Asset in Commentary .11(5) to NYSE Amex Rule 915, 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 options<sup>8</sup> and the current continuing or maintenance listing standards applicable to the trading of options on Index-Linked Securities on NYSE Amex. The Commission also notes that it has previously approved an amendment to Section 107H of the Amex Company Guide to add the VIX Futures to the definition of "Futures Reference Asset" for the listing and trading of Futures-Linked Securities.<sup>9</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-NYSEAmex-2009-59) is hereby approved.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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<sup>7</sup> For purposes of Commentary .11 to NYSE Amex Rule 915, 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.

<sup>8</sup> 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.

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

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

<sup>11</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60818; File No. SR-BX-2009-048]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Approving a Proposed Rule Change To Amend the Grandfathered Rules of the Exchange

October 13, 2009.

On August 17, 2009, NASDAQ OMX BX, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend the Grandfathered Rules of the Exchange.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on September 8, 2009.<sup>4</sup> The Commission received no comments on the proposal.

The proposed rule change would incorporate certain provisions of the former Constitution of the Boston Stock Exchange, Incorporated ("BSE")<sup>5</sup> into the Grandfathered Rules. The provisions to be added to the Grandfathered Rules relate to the following: (1) Participation (formerly Membership) rules, to supplement the By-Laws and the Grandfathered Rules to direct the BOX Options Participants ("Participants") and prospective participants to Section 6(c) of the Act,<sup>6</sup> as cited in the proposed rule text regarding the investigation and acceptance of an applicant; (2) Non-liability of the Exchange provision, to reinforce to Participants the "non-liability" of the Exchange for damages sustained from use of the facilities of the Exchange; (3) Insolvent Participants, to provide guidance for Insolvent Participants to notify the Exchange, of such insolvency and to state that the Exchange will notify the Commission of such insolvency; and (4) Exchange Inquiries to remind Participants that they may be subject to expulsion or suspension for failure to respond to an Exchange Inquiry.

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

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

<sup>3</sup> The Grandfathered Rules are operative to the extent that they apply to the Boston Options Exchange Group, LLC ("BOX") and to Options Participants on the Exchange, and are to be read in conjunction with the Rules of the BOX.

<sup>4</sup> See Securities Exchange Act Release No. 60591 (August 31, 2009), 74 FR 46288.

<sup>5</sup> Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR-BSE-2008-02, -23, -25; SR-BSECC-2008-01) ("Release No. 34-58324").

<sup>6</sup> 15 U.S.C. 78f(c).

<sup>3</sup> See Securities Exchange Act Release No. 60622 (September 3, 2009), 74 FR 46826.

<sup>4</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>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(5).

The Exchange proposes to apply these provisions retroactively to the date on which proposals set forth in Release No. 34-58324 were approved by the Commission.<sup>7</sup>

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>8</sup> and, in particular, the requirements of Section 6 of the Act<sup>9</sup> and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>10</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, 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 because it clarifies the provisions of the former BSE Constitution that will continue to apply to Participants.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-BX-2009-048) be, and it hereby is, approved.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60822; File No. SR-NYSEArca-2009-77]

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

October 14, 2009.

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")<sup>1</sup> and Rule 19b-4<sup>2</sup> 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.<sup>3</sup> 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 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 exchange<sup>4</sup> and, in particular, the requirements of Section 6 of the Act.<sup>5</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>6</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, 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 Reference Asset.<sup>7</sup> 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 options<sup>8</sup> 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.<sup>9</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-NYSEArca-2009-77) is hereby approved.

<sup>7</sup> 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.

<sup>8</sup> 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.

<sup>9</sup> 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).

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

<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. 60621 (September 3, 2009), 74 FR 46818.

<sup>4</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>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> See *supra* note 5.

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

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(5).

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

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