

market participants at the same time, the Exchange will halt trading in the affected Units. Moreover, NYSE Arca Equities Rule 8.300(e) limits certain dealings and trading activity of ETP Holders acting as registered Market Makers in Units, prescribes various recordkeeping and disclosure requirements for ETP Holders, and prohibits the use of any material non-public information regarding trading in the underlying physical asset or commodity, futures or options on futures, or any other related derivatives.

The Commission further believes that the trading rules and procedures to which the Units will be subject pursuant to this proposal are consistent with the Act. The Exchange has represented that the Units are equity securities subject to NYSE Arca's rules governing the trading of equity securities.

In support of this proposal, the Exchange has made the following representations:

(1) The Units satisfy the requirements of NYSE Arca Equities Rule 8.300, which includes the initial and continued listing criteria for Partnership Units.

(2) The Exchange's surveillance procedures are adequate to properly monitor trading of the Units in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(3) The Exchange will distribute an Information Bulletin, the contents of which are more fully described above, to its ETP Holders in connection with the trading of the Units.

(4) The Partnerships will comply with the requirements of Rule 10A-3 under the Act<sup>19</sup> as it applies to limited partnerships.

This approval order is based on the Exchange's representations.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>20</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 notes that it has previously approved the listing and trading of the Units on Amex<sup>21</sup> and believes that the Exchange's proposal to list and trade such Units does not appear to present any novel or significant regulatory issues. As such, the Commission believes that accelerating approval of this proposal should benefit investors

by creating, without undue delay, additional competition in the market for such products.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>22</sup> that the proposed rule change (SR-NYSEArca-2008-127) 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>23</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-27880 Filed 11-21-08; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58967; File No. SR-NYSEArca-2008-129]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Schedule of Fees and Charges for Exchange Services That Apply to Mid-Point Passive Liquidity Orders

November 17, 2008.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Exchange Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on November 6, 2008, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange"), through its wholly-owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities"), filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend its Schedule of Fees and Charges for Exchange Services (the "Schedule") in order to extend its credit for Mid-Point Passive Liquidity ("MPL") orders to include transactions that provide liquidity in Tape C securities. A copy of the new Schedule, showing changes

pursuant to this filing, attached as Exhibit 5, 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.

#### 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 Exchange 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 these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange currently offers NYSE Arca Users<sup>4</sup> a \$.0015 per share credit for MPL orders that provide liquidity in Tape A securities. In order to provide additional incentives for participation and price improvement on NYSE Arca, the Exchange proposes to extend this credit to MPL orders that provide liquidity in Tape C securities. For start of month billing purposes, the Exchange intends to offer this \$.0015 per share credit to all Users for MPL orders providing liquidity in Tape C securities retroactively, starting November 3, 2008.

The Exchange believes that the proposed credit will foster additional flexibility and increased system functionality for NYSE Arca Users. The Exchange further believes that the proposed credits are reasonable and that the proposed changes to the Schedule are equitable in that they apply uniformly to our Users.

###### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),<sup>5</sup> in general, and furthers the objectives of Section

<sup>4</sup> See NYSE Arca Equities Rule 1.1(yy) for the definition of "User." Under Rule 1.1(yy), the term User means any ETP Holder or Sponsored Participant who is authorized to obtain access to the NYSE Marketplace pursuant to NYSE Arca Equities Rule 7.29. MPL Orders, similar to all other order types offered by the Exchange, are available only to authorized Users.

<sup>5</sup> 15 U.S.C. 78a et seq.

<sup>19</sup> 17 CFR 240.10A-3.

<sup>20</sup> 15 U.S.C. 78s(b)(2).

<sup>21</sup> See Amex Filings, *supra*, note 4. The Units have also been approved for trading on the Exchange pursuant to UTP. See UTP Filings, *supra*, note 5.

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

<sup>23</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a et seq.

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

6(b)(4),<sup>6</sup> in particular, in that it is intended to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the proposed credits are reasonable. The proposed credits further the objectives of Regulation NMS by promoting competition and granting fair and equal access to all exchange participants. The Exchange also believes that the proposed changes to the Schedule are equitable in that they apply uniformly to our Users.

#### *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 Exchange 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act and SEC Rule 19b-4(f)(2) thereunder in that it establishes or changes a due, fee, or other charge imposed on members by the self-regulatory organization.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### **IV. 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-NYSEArca-2008-129 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-NYSEArca-2008-129. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also 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 available publicly. All submissions should refer to File No. SR-NYSEArca-2008-129 and should be submitted on or before December 15, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-27882 Filed 11-21-08; 8:45 am]

**BILLING CODE 8011-01-P**

### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-58968; File No. SR-NYSEArca-2008-111]

#### **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® ("VIX®") Futures ("VIX Futures") to the Definition of Futures Reference Asset**

November 17, 2008.

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® ("VIX®") 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 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

<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").

<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> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 17 CFR 200.30-3(a)(12).