

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57291; File No. SR-NYSE-2007-113]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change To Amend Annual Fees Applicable to Groups of Real Estate Investment Trusts Under Common External Management

February 7, 2008.

#### I. Introduction

On December 20, 2007, the New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Annual Fees applicable to groups of Real Estate Investment Trusts (“REITs”) under common external management. The proposed rule change was published for comment in the *Federal Register* on January 4, 2008.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

The Exchange proposes to amend section 902 of the Listed Company Manual by inserting proposed new section 902.03A. In its filing, the Exchange stated that in a limited number of cases, a single entity or affiliated entities may externally manage more than one REIT. As an incentive for all of the REITs in such a group to list on the Exchange, the Exchange is proposing to offer a group discount on Annual Fees when there are at least three REITs under common external management.

REITs will continue to be subject to the Annual Fees applicable to listed equity securities as set forth in section 902.03. However, section 902.03A will provide that, where all of the operations of each of a group of three or more listed REITs are externally managed by the same entity or by affiliated entities, each REIT in the group will receive a 30% discount on the applicable Annual Fees in relation to any year in which the common management relationship exists as of January 1. A newly-listed REIT that qualifies for the discount will receive it in relation to the part of the

year for which it pays a prorated Annual Fee upon initial listing. For example, a REIT that lists on July 1 and whose outstanding number of shares would subject it to a \$100,000 Annual Fee would normally pay a prorated amount of \$50,000 because it would be listed for exactly half of the first year of listing. If that REIT qualifies for the group discount, it would pay \$35,000 (70% of the prorated Annual Fee that would otherwise be payable). This filing seeks approval to apply the discount retroactively to January 1, 2008.

#### III. Discussion and Commission Findings

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> In particular, the Commission finds that the proposal is consistent with section 6(b)(4) of the Act,<sup>5</sup> which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Commission also finds that the proposal is consistent with section 6(b)(5) of the Act,<sup>6</sup> which requires, *inter alia*, that the rules of a national securities exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and not designed to permit unfair discrimination between issuers.

The Commission notes that the Exchange does not believe the limitation of the proposed discount to groups of three or more REITs under common external management is unfairly discriminatory. In support of this the Exchange states that: (i) It has a reasonable competitive justification for the discount; (ii) if it applied the discount to groups of less than three REITs it could lead to a significant loss of revenue to the Exchange; and (iii) it is not increasing the Annual Fees for REITs, and other, issuers. The Commission also notes that the Exchange has represented that the loss of revenue from the discount, as proposed, will not hinder its ability to fulfill its regulatory responsibilities.

The Commission believes it is reasonable for the Exchange to balance its need to remain competitive, while at the same time ensuring adequate revenue to meet its regulatory

responsibilities. The Commission further notes that the Annual Fees applicable to all other REITs and operating companies are remaining unchanged, so no company that is not qualified for the discount is being asked to pay higher Annual Fees than it is currently paying.

In light of these arguments, the Commission agrees that the proposed discount, which is retroactively effective to January 1, 2008, does not constitute an inequitable allocation of reasonable dues, fees, and other charges, does not permit unfair discrimination between issuers, and is generally consistent with the Act.

#### IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR-NYSE-2007-113) is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8-2610 Filed 2-12-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57284; File No. SR-NYSEArca-2008-16]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules Pertaining to the Terms of Index Option Contracts

February 7, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”) <sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 30, 2007, NYSE Arca, Inc. (“NYSE Arca” or “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 substantially by NYSE Arca. NYSE Arca filed the proposed rule change as a “non-controversial” proposed rule change pursuant to section 19(b)(3)(A) of the Act <sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it effective

<sup>1</sup> 15 U.S.C. 78s(b)(2).

<sup>2</sup> 17 CFR 200.30-3(a)(12).

<sup>3</sup> 15 U.S.C. 78s(b)(1).

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

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 240.19b-4(f)(6).

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

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

<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. 57061 (December 28, 2007), 73 FR 0902.

upon filing with the Commission. 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**

NYSE Arca proposes to amend Rule 5.19(a) (Terms of Index Option Contracts) to allow the listing of up to seven expiration months for options on certain broad-based indexes. NYSE Arca proposes to implement the proposed rule change immediately.

The text of the proposed rule change is available at <http://www.nyse.com>, the principal office of NYSE Arca, and 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, NYSE Arca included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NYSE Arca 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**

NYSE Arca proposes to amend Rule 5.19 (Terms of Index Options Contracts) to allow the Exchange to list up to seven expiration months for broad-based security index options upon which a constant three-month volatility index is calculated. Currently, Rule 5.19(a)(3) permits the Exchange to list only six expiration months in any index options at any one time.

Volatility products offer investors a unique set of tools for hedging. For example, the Chicago Board Options Exchange ("CBOE") Volatility Index ("VIX") options, first introduced in February 2006, have proven to be one of CBOE's most successful new products ever listed, currently averaging over 90,000 contracts traded per day. In a recent proposal, CBOE explained that it plans to introduce new volatility products and new volatility indexes in the near future, including the CBOE S&P 500 Three-Month Volatility Index ("VXV").<sup>5</sup> Similar to the VIX, the VXV

is a measure of S&P 500 implied volatility, the volatility implied by S&P option prices. Instead of reflecting a constant one-month implied volatility period, however, VXV is designed to reflect the implied volatility of an option with a constant three months to expiration. Since there is only one day on which an option has exactly three months to expiration, VXV is calculated as a weighted average of options expiring immediately before and immediately after the three-month standard.

Accordingly, an index calculator would need to use four consecutive expiration months in order to calculate a constant three-month volatility index. Under the current application of NYSE Arca Rule 5.19(a)(3), the Exchange generally lists three consecutive near term months and three months on a quarterly expiration cycle. One of the three consecutive near term months is always a quarterly month; however, that near term contract month (which is also a quarterly month) is not included as part of the three months listed on a quarterly expiration cycle. Therefore, in order to permit the addition of four consecutive near term months under current Rule 5.19(a)(3), the Exchange would only be able to list two months on a quarterly expiration cycle. Because of customer demand and other investment strategy reasons for having three months on a quarterly expiration cycle, the Exchange is seeking to increase, from six to seven, the number of expiration months for broad-based security index options upon which a constant three-month volatility index is calculated.

Proposed Rule 5.19(a)(3)(A) will permit the Exchange to list up to seven expiration months at any one time for any broad-based security index option contracts (e.g., NDX, RUT) upon which any exchange calculates a constant three-month volatility index.

Without this proposed rule, if a three-month volatility index is calculated using only three consecutive near term months, this would result in the VXV's being calculated with options expiring three months apart about one-third of the time. Another one-third of the time, VXV would be calculated with options expiring two months apart. And the final one-third of the time, VXV would be calculated with options expiring one month apart. As a result, the calculation

<sup>5</sup> CBOE calculates volatility indexes on other broad-based security indexes, such as the Dow Jones Industrial Average index ("DJX"), the Nasdaq 100 index ("NDX"), and the Russell 2000 index ("RUT"). CBOE may calculate a constant three-month volatility index on DJX, NDX, or RUT in the future. See Securities Exchange Act Release No. 56821 (November 20, 2007), 72 FR 66210 (November 27, 2007) (SR-CBOE-2007-82) ("CBOE proposal").

of the three-month VXV under the current rules would render the VXV subject to inconsistencies that may make the index unattractive as an underlying for volatility products. The proposed rule change will permit the Exchange, eight times a year, to add an additional seventh month in order to maintain four consecutive near term contract months.<sup>6</sup>

Therefore, the Exchange believes that the addition of a fourth consecutive near term month for broad-based security index options upon which a constant three-month volatility index is calculated will result in a consistent calculation in which the option series that bracket three months to expiration will always expire one month apart. In order to accommodate the listing of a fourth consecutive near term month and to maintain the listing of three months on a quarterly expiration cycle, the Exchange proposes to increase, from six to seven, the number of expiration months for broad-based security indexes on which a constant three-month volatility index is calculated.

The Exchange also proposes making minor technical changes to certain subparagraphs contained in Rule 5.19(a) in order to accommodate the new rule.

NYSE Arca has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the additional listing of a seventh contract month in order to maintain four consecutive near term contract months for those broad-based security index options upon which a constant three-month volatility index is calculated.

##### **2. Statutory Basis**

The proposed rule change is consistent with the provisions of section 6 of the Act,<sup>7</sup> in general, and with sections 6(b)(1) and (b)(5) of the Act,<sup>8</sup> in particular, in that the proposal is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and 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. NYSE Arca believes that the proposed rule

<sup>6</sup> Examples illustrating the need for a seventh month in order to maintain four consecutive near term contract months can be found in the CBOE proposal, *supra* note 5.

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(1) and (b)(5).

<sup>5</sup> CBOE calculates volatility indexes on other broad-based security indexes, such as the Dow Jones Industrial Average index ("DJX"), the Nasdaq

change is needed to remain competitive with other self-regulatory organizations that have listed the additional option series.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

NYSE Arca 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*

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>11</sup> However, Rule 19b-4(f)(6)(iii)<sup>12</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay, to permit the Exchange to list options on the Fund immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that another self-regulatory organization recently adopted a substantially similar rule change that was effective upon filing,<sup>13</sup> and that this filing raises no new regulatory issues.

The Commission believes that increasing, from six to seven, the

number of expiration months for broad-based security indexes on which an Exchange calculates a constant three-month volatility index (to accommodate a fourth consecutive near-term month while maintaining the listing of three months on a quarterly expiration cycle) will result in a more consistent and predictable calculation in which the option series that bracket three months to expiration will always expire one month apart, thereby promoting just and equitable principles of trade while protecting investors and the public interest. The Commission also notes the Exchange's representations that it possesses the necessary systems capacity to handle the additional traffic associated with the additional listing of a seventh contract month in order to maintain four consecutive near-term contract months for those broad-based security index options upon which the Exchange calculates a constant three-month volatility index. The Commission hereby grants the Exchange's request and designates the proposal as operative upon filing.<sup>14</sup>

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 No. SR-NYSEArca-2008-16 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-NYSEArca-2008-16. 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 also will be available for inspection and copying at the principal office of NYSE Arca. 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 Number SR-NYSEArca-2008-16 and should be submitted on or before March 5, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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## **DEPARTMENT OF STATE**

### **[Public Notice 6095]**

#### **Announcement of Meetings of the International Telecommunication Advisory Committee**

*Summary:* This notice announces a meeting of the International Telecommunication Advisory Committee (ITAC) to prepare advice on the World Telecommunication Standardization Assembly 2008 (WTSA 08).

The ITAC will meet to prepare advice for the U.S. on preparations for the World Telecommunication Standardization Assembly 2008 (WTSA 08) including positions on cybersecurity, study program restructuring, and leadership on Tuesday afternoon February 26, 2008 2-

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NYSE Arca has complied with this requirement.

<sup>12</sup> *Id.*

<sup>13</sup> See Securities Exchange Act Release No. 57104 (January 4, 2008), 73 FR 2070 (January 11, 2008) (SR-ISE-2007-113).

<sup>14</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>15</sup> 17 CFR 200.30-3(a)(12).