

Technical Changes

The Exchange proposes to make technical changes to Rules 24.4.03, 24.4.04, and 24.5, Exercise Limits by adding "VIX, VXN and VXD" to the rule text.¹¹ The Exchange proposes to make technical changes to Rules 24A.7(b), 24A.8(a), 24B.7(b), and 24B.8(a), by adding the parenthetical phrase, "including reduced-value option contracts" to the rule text. These FLEX rules already contemplate reduced-value option contracts, and the proposed changes are consistent with the treatment of non-FLEX reduced-value option contracts.¹²

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)¹³ of the Act in general and furthers the objectives of Section 6(b)(5)¹⁴ in particular in that it would permit trading in options based on the index pursuant to rules designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and thereby would provide investors with the ability to invest in options that provide statistical measurements of market variability.

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

CBOE believes that the proposed rule change does not 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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to

90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. By order approve such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

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. Please include File No. SR-CBOE-2008-31 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-CBOE-2008-31. 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 available publicly. All submissions should refer to File Number SR-CBOE-2008-31 and should be submitted on or before July 2, 2008.

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

Florence E. Harmon,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57927; File No. SR-NYSEArca-2008-54]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rules 6.62 and 6.91 Describing Complex Orders, Complex Order Priority, and Complex Order Execution

June 5, 2008.

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 May 23, 2008, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On June 5, 2008, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to modify Rules 6.62 and 6.91 describing Complex Orders, Complex Order Priority, and Complex Order Execution. The text of the proposed rule change is available at the principal office of NYSE Arca, at the Commission's Public Reference Room, and at <http://www.nyse.com>.

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

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 updates cross references to recently renumbered rules.

¹¹ The Exchange inadvertently neglected to request the Commission's approval to add "VIX, VXN and VXD" to the respective rule text when the position limits for these products were eliminated. See Securities Exchange Act Release No. 54019 (June 20, 2006), 71 FR 36569 (June 27, 2006) (SR-CBOE-2006-55).

¹² See Securities Exchange Act Release No. 56350 (September 4, 2007), 72 FR 51878 (September 11, 2007) (SR-CBOE-2007-79).

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

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

For many years, the options exchanges have recognized that strategies involving more than one option series or more than one instrument associated with an underlying security are different from regular buy and sell orders for a single series, and orders to achieve such strategies should be defined separately. As the sophistication of the industry has grown, so have the strategies, and the options exchanges have regularly added new strategies to the list of defined complex order types. The investing industry, however, creates new, legitimate investment strategies that do not necessarily fit into one of the narrow definitions for complex order types that the exchanges presently use. These order types are often developed for a particular strategy, specific to a particular issue. The Exchange believes that to attempt to define every individual strategy imaginable, and file additional rules to memorialize them, would be a time consuming and onerous process, and would serve only to confuse the investing public. As a result, bona fide transactions to limit risk are not afforded the facility of execution afforded more common complex orders.

For instance, the Chicago Board Options Exchange ("CBOE")⁴ and the International Securities Exchange ("ISE")⁵ each define at least nine specific complex strategies. These are the most comprehensive lists of complex strategies defined in a rule set, yet they do not cover all of the possibilities of complex orders which are routinely presented for execution on the trading floor. Some strategies that do not fit the predefined structures are: (i) Long in the money call, long two in the money put, long out of the money call; (ii) long in the money call, short at the money call, long out of the money call; and (iii) long one in the money put,

short three at the money puts, long two out of the money puts. Each of these represents a legitimate investment strategy to limit risk or unwind an already established position in a portfolio.

To provide for greater flexibility in the design and use of complex strategies, NYSE Arca proposes to eliminate specific complex order types described in Rule 6.62, and adopt a generic definition approved for use for exemption from Trade Through Liability by the Options Linkage Authority as described in the *Plan For The Purpose Of Creating And Operating An Intermarket Option Linkage* ("Linkage Plan"). The Exchange believes this will give investors greater flexibility in creating strategies that may be processed electronically with greater accuracy and less intermediation than the present manual methods.

Proposed Rule 6.91 describes the entry of Complex Orders in the Consolidated Book and the operation of a Complex Matching Engine. The Complex Matching Engine is the mechanism in which Complex Orders are executed against each other or against individual quotes and orders in the Consolidated Book. Complex Orders in the Consolidated Book will be available to all market participants via an electronic interface. NYSE Arca proposes that Complex Orders be ranked in the Consolidated Book in strict price time based on the strategy and the total or net debit or credit.

Complex Orders eligible for execution in the Complex Matching Engine are defined to be consistent with the Linkage Plan Trade Through exemption. Therefore execution prices for the individual legs of a Complex Trade that are outside of the National Best Bid or Offer may be reported. The Complex Matching Engine will never, however, execute any of the legs of a Complex Trade at a price outside of the NYSE Arca best bid or offer ("NYSE BBO") for that leg.

NYSE Arca also proposes that Complex Orders attempt to execute against other Complex Orders in the Consolidated Book before attempting to execute against the individual leg markets in the Consolidated Book, provided that for purposes of priority, where the total or net debit or credit derived from the individual leg market is better than or equal to the price of the Complex Order, the individual leg markets will maintain priority. NYSE Arca notes that the various options exchange rule sets recognize that investors wishing to complete a complex strategy should not be encumbered by orders for a single leg.

To illustrate how the proposal would work, suppose, for instance, the markets for two call series is as follows:

XYZ July 30	2.20–2.40	10 × 10
XYZ July 35	1.10–1.25	10 × 10

A Complex Order is entered to Buy 10 July 30/Sell 10 July 35 for a Net Debit of 1.30. The Complex Matching Engine checks the Consolidated Book and finds there are no Complex Orders willing to sell the strategy, so it executes against the leg markets at prices of 2.40 for the July 30 calls and 1.10 for the July 35 calls.

With the same leg markets available, another Complex Order is sent to NYSE Arca to Buy 10 July 30/Sell 10 July 35 for a Net Debit of 1.00. Since the screen market is .95–1.30, the order would not execute but route to the Consolidated Book and post with a debit of 1.00. This would be disseminated to all NYSE Arca market participants. An order to Sell July 30/Buy July 35 for a credit of 1.00 arrives. It is routed directly to the Complex Matching Engine, where it is matched against the posted order, and priced at the first available prices found in the Complex Matching Engine, which, under this scenario, are 2.20 and 1.20.

The Exchange proposes, however, that if the individual leg markets are pricing the strategy at the same price as the posted Complex Order, an order sent to be executed against the posted order will instead execute against the individual orders and quotes in the leg markets. For instance, suppose that before the second order described above arrives, the markets in the options change as follows:

XYZ July 30	2.20–2.40	10 × 10
XYZ July 35	1.10–1.20	10 × 10

The individual leg markets are now pricing the strategy at the same price as the posted Complex Order. Even though the Complex Order net debit has been disseminated and advertised, the individual leg markets will maintain priority over the posted Complex Order. The Complex Matching Engine will execute the order with a credit of 1.00 against the 1.00 debit price of the leg markets, and then any residual will be matched against the Complex Order in the Consolidated Book at the same 1.00 debit.

Complex Orders that are not executable are entered into the Consolidated Book. The Complex Matching Engine will monitor the markets in the individual legs of Complex Orders in the Consolidated Book. If the market prices in the legs move so that the Complex Order is now executable in full (or in a permissible ratio), the Complex Order will be

⁴ See CBOE Rule 6.53C.

⁵ See ISE Rule 722.

executed against the individual orders and quotes in the leg markets.

The Exchange proposes that Lead Market Makers ("LMM") not be afforded any guaranteed allocation either in the execution of a complex strategy nor, if present, at the NYSE Arca BBO when a Complex Order executes against the individual leg markets. There is no obligation for LMMs (or any Market Maker) to quote prices for complex strategies; therefore there is no need for a guaranteed allocation. A market participant that establishes a price for a strategy should be rewarded for setting that price by being granted strict time priority. Similarly, the LMM quotes in the individual leg markets are available to all orders but are not advertising a particular strategy. They should not be granted a guaranteed allocation in any of the leg markets resulting from the execution of a Complex Order. Complex Orders will thus execute against the individual legs of the Consolidated Book in strict price time. The Exchange also proposes to continue to allow the individual legs of Complex Orders to be executed in the minimum applicable trading increments in the designated series in order to achieve the total or net debit/credit, consistent with Rule 6.72.

For purposes of the firm quote rule, the Complex Order in the Consolidated Book shall be considered "firm" at the posted debit or credit.⁶

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act⁷ in general and furthers the objectives of Section 6(b)(5) of the Act⁸ in particular in that it is designed 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 the proposed rule change related to Complex Orders is appropriate in that Complex Orders are widely recognized by market participants as invaluable, both as an investment and for risk management and investment strategy. The proposed rule change would provide the opportunity for a more efficient mechanism for carrying out these strategies.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

- (A) By order approve such proposed rule change; or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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. Please include File Number SR-NYSEArca-2008-54 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-2008-54. 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 available publicly. All submissions should refer to File Number SR-NYSEArca-2008-54 and should be submitted on or before July 2, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Florence E. Harmon,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57930; File No. SR-NASDAQ-2008-017]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval to Proposed Rule Change, as Modified by Amendment No. 1, To Clarify the Listing of Additional Shares Notification Process

June 5, 2008.

I. Introduction

On March 6, 2008, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") 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 Nasdaq's listing of additional

⁶ See Rule 602 of Regulation NMS, 17 CFR 242.602.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.