

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84351; File No. SR-NYSE-2018-30)

October 3, 2018

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change to Provide for the Listing of Exchange Traded Products with No Component NMS Stock Listed on the Exchange, Delete Obsolete Listing Rules for Exchange Traded Products and Amend Rules Regarding Unlisted Trading Privileges

I. Introduction

On June 15, 2018, the New York Stock Exchange LLC (“Exchange” or “NYSE”) 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 provide for the listing of exchange traded products (“ETPs”) that do not have any component NMS Stock³ listed on the Exchange, delete obsolete listing rules for ETPs, and amend rules regarding unlisted trading privileges (“UTP”). The proposed rule change was published for comment in the Federal Register on July 6, 2018.⁴ On July 24, 2018, the Exchange submitted partial Amendment No. 1 to the proposed rule change. On August 16, 2018, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.⁵ On August 23, 2018, the Exchange submitted

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ NMS Stock is defined in Rule 600 of Regulation NMS, 17 CFR 242.600(b)(47).

⁴ See Securities Exchange Act Release No. 83560 (June 29, 2018), 83 FR 31585 (“Notice”).

⁵ See Securities Exchange Act Release No. 83860, 83 FR 42534 (August 22, 2018).

Amendment No. 2 to the proposed rule change.⁶ The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

As described in more detail in the Notice,⁷ the Exchange proposes to: (1) provide for the listing of certain ETPs, provided that an ETP meets the applicable requirements of NYSE Rules 5P and 8P and does not have any component NMS Stock that is listed on the Exchange or is based on, or represents an interest in, an underlying index or reference asset that includes an NMS Stock listed on the Exchange;⁸ (2) delete a sentence in NYSE Rule 5.1(a)(1) that is no longer relevant given the Exchange's addition of Section 303A to the Listed Company Manual,⁹ which requires all NYSE-listed companies, including any ETPs listed on the Exchange, to comply with Section 303A of the Listed Company Manual; (3) delete certain listing rules that would be superseded by the ETP listing and trading requirements proposed in NYSE Rules 5P and 8P; (4) delete all references in NYSE Rules 5P and 8P that imply that the initial and

⁶ Amendment No. 2 replaced and superseded the original filing, as modified by partial Amendment No. 1, in its entirety. In Amendment No. 2, the Exchange: (i) provided background information regarding its Pillar platform and clarified that it would not be listing ETPs on its Pillar platform at this time but that it would announce via trader update when it plans to do so; (ii) designated as "Reserve" certain sections of the Listed Company Manual which rules are being deleted by this proposal; (iii) represented that the Commission approved Exchange listing rules that are substantially identical to those on NYSE Arca, Inc. ("NYSE Arca") for certain ETPs; and (iv) made technical changes to the rule text and proposal. Because Amendment No. 2 does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues under the Act, it is not subject to notice and comment. Amendment No. 2 is available at: <https://www.sec.gov/comments/sr-nyse-2018-30/nyse201830-4274809-173136.pdf>.

⁷ See Notice, *supra* note 4.

⁸ The Exchange represents that its proposed rules for the qualification, listing, and trading of these products are substantially identical (other than certain non-substantive and technical amendments) as the rules of NYSE Arca and the Exchange's other affiliates, including NYSE American LLC ("NYSE American").

⁹ Section 303A implements the requirements of Rules 10A-3 and 10C-1 under the Act.

continued listing standards contained in those rules may apply to the trading pursuant to UTP of such ETPs, and make related changes; and (5) amend NYSE Rule 5.1(a)(2) relating to ETPs trading pursuant to UTP to delete the requirement that the Exchange file with the Commission a Form 19b-4(e) with respect to each ETP it trades by UTP, and to make clear that the Exchange would halt trading in an ETP trading pursuant to UTP as provided for in NYSE Rule 7.18.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁰ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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 the Exchange's proposed listing standards for ETPs¹³ do not raise any novel issues, as they are consistent with the rules of other national securities

¹⁰ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ The proposed listing standards of Rules 5P and 8P: (1) provide for the listing of certain ETPs, provided that an ETP meets the applicable requirements of NYSE Rules 5P and 8P and does not have any component NMS Stock that is listed on the Exchange or is based on, or represents an interest in, an underlying index or reference asset that includes an NMS Stock listed on the Exchange; (2) delete a sentence in NYSE Rule 5.1(a)(1) that is no longer relevant given the Exchange's addition of Section 303A to the Listed Company Manual; and (3) delete all references in NYSE Rules 5P and 8P that imply that the initial

exchanges. The proposed rules for the qualification, listing, and trading of ETPs are substantially identical (other than certain non-substantive and technical changes) to the rules of NYSE Arca and NYSE American. Moreover, the Exchange’s proposal to make clear that the initial and continued listing standards in Rules 5P and 8P do not apply to the trading pursuant to UTP of such ETPs conforms NYSE’s rules to the corresponding provisions of the rules of NYSE National, Inc. (“NYSE National”).¹⁴

Additionally, the Commission believes that the deletion of listing rules that would be superseded by the proposed rule change, the proposed amendments to NYSE Rules 5.1(a), and technical conforming changes are appropriate and consistent with Section 6(b)(5) of the Act. These changes would eliminate language that is no longer relevant and modify the Exchange rules to be more precise, thereby leading to greater clarity for Exchange members, regulators, investors, and the general public.

In approving the proposed rule change, the Commission also relies upon the Exchange’s representation that: (1) listed ETPs would be subject to the existing trading surveillances administered by the Exchange for ETPs trading UTP, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, and (2) the initial and continued listing reviews of ETPs listed on the Exchange will be conducted in the same manner as they are on NYSE’s affiliated exchange, NYSE Arca.¹⁵ Further, the Exchange or FINRA, on behalf of the Exchange, or both, will communicate as

and continued listing standards contained in those rules may apply to the trading pursuant to UTP of such ETPs.

¹⁴ In addition, the Commission believes that the proposed changes to NYSE Rule 5.1(a)(2) would further harmonize the Exchange’s rules applicable to ETPs traded on a UTP basis with the rules of NYSE National.

¹⁵ See Notice, supra note 4, at 31587–31588.

needed regarding trading in ETPs, as well as certain other securities and financial instruments underlying such ETPs, with other markets and other entities that are members of the Intermarket Surveillance Group (“ISG”). The Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in ETPs and financial instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in ETPs, as well as certain other securities and financial instruments underlying such ETPs from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.¹⁶

The Commission therefore finds that the proposed rule change, as modified by Amendment No. 2, is consistent with, and furthers the objectives of, Section 6(b)(5) of the Act.¹⁷

¹⁶ See *id.* at 31587.

¹⁷ 15 U.S.C. 78f(b)(5).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁸ that the proposed rule change (SR-NYSE-2018-30), as modified by Amendment No. 2, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

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Assistant Secretary

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 17 CFR 200.30-3(a)(12).