

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-78263; File No. SR-NYSE-2016-44)

July 8, 2016

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Allowing the Exchange to Trade Pursuant to Unlisted Trading Privileges for Any NMS Stock Listed on Another National Securities Exchange; Establishing Listing and Trading Requirements for Exchange Traded Products; and Adopting New Equity Trading Rules Relating to Trading Halts of Securities Traded Pursuant to UTP on the Pillar Platform

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on June 30, 2016, New York Stock Exchange LLC (“NYSE” or the “Exchange”) 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 (1) allow the Exchange to trade pursuant to unlisted trading privileges (“UTP”) for any NMS Stock<sup>4</sup> listed on another national securities exchange; (2) establish listing and trading requirements for exchange traded products (“ETPs”); and (3) adopt new equity trading rules relating to trading halts of securities traded pursuant to UTP on the Pillar platform. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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

<sup>4</sup> NMS Stock is defined in Rule 600 of Regulation NMS, 17 CFR 242.600(b)(47).

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 self-regulatory organization 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 those 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 parts of such statements.

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

1. Purpose

The Exchange is proposing new rules to trade all Tape B and Tape C symbols, on a UTP basis, on its new trading platform, Pillar.<sup>5</sup> The Exchange does not currently trade any securities on a UTP basis.

In addition, the Exchange is proposing rules for the listing and trading of the following types of Exchange Traded Products:<sup>6</sup>

- Equity Linked Notes (“ELNs”);
- Investment Company Units;
- Index-Linked Exchangeable Notes;

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<sup>5</sup> On January 29, 2015, the Exchange announced the implementation of Pillar, which is an integrated trading technology platform designed to use a single specification for connecting to the equities and options markets operated by the Exchange and its affiliates, NYSE Arca, Inc. (“NYSE Arca”) and NYSE MKT LLC (“NYSE MKT”). See Trader Update dated January 29, 2015, available here: [http://www1.nyse.com/pdfs/Pillar\\_Trader\\_Update\\_Jan\\_2015.pdf](http://www1.nyse.com/pdfs/Pillar_Trader_Update_Jan_2015.pdf).

<sup>6</sup> The Exchange is proposing to define the term “Exchange Traded Product” to mean a security that meets the definition of “derivative securities product” in Rule 19b-4(e) under the Securities Exchange Act of 1934. See proposed Rule 1.1(bbb). This proposed definition is identical to the definition of “Derivatives Securities Product” in NYSE Arca Equities Rule 1.1(bbb).

- Equity Gold Shares;
- Equity Index-Linked Securities;
- Commodity-Linked Securities;
- Currency-Linked Securities;
- Fixed-Income Index-Linked Securities;
- Futures-Linked Securities;
- Multifactor-Index-Linked Securities;
- Trust Certificates;
- Currency and Index Warrants;
- Portfolio Depositary Receipts;
- Trust Issued Receipts;
- Commodity-Based Trust Shares;
- Currency Trust Shares;
- Commodity Index Trust Shares;
- Commodity Futures Trust Shares;
- Partnership Units;
- Paired Trust Shares;
- Trust Units;
- Managed Fund Shares; and
- Managed Trust Securities.

The Exchange's proposed rules for these products are substantially identical (other than with respects[sic] to certain non-substantive and technical amendments described below) as the

rules of NYSE Arca Equities for the qualification, listing and trading of such products.<sup>7</sup>

The Exchange's approach in this filing is the same as the approach of (1) BATS BYX Exchange, Inc. f/k/a BATS Y-Exchange, Inc. ("BYX"), which filed a proposed rule change with the Commission to conform its rules to the rules of its affiliate, Bats BZX Exchange, Inc. f/k/a BATS Exchange, Inc. ("BATS"),<sup>8</sup> (2) NASDAQ Stock Market LLC, which filed a proposed rule change with the Commission to amend its rules regarding Portfolio Depository Receipts and Index Fund Shares to conform to the rules of NYSE Arca,<sup>9</sup> and (3) American Stock Exchange LLC ("Amex"), which filed a proposed rule change with the Commission to copy all of the relevant rules of Amex in their entirety (other than with respects[sic] to certain non-substantive and technical changes) for adoption by its new trading platform for equity products and exchange traded funds – AEMI.<sup>10</sup>

The Exchange's only trading pursuant to UTP will be on the Pillar platform; it will not trade securities pursuant to UTP on its current platform. Further, at this time, the Exchange does not intend to list ETPs on its Pillar platform and will only trade ETPs on the Pillar platform pursuant to UTP. Therefore, the Exchange is only proposing ETP rules in this rule filing that would apply to the Pillar platform, and the Exchange is not proposing to change any of the current rules of the Exchange pertaining to the listing and trading of ETPs in the NYSE Listed

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<sup>7</sup> See NYSE Arca Equities Rules 5 (Listings) and 8 (Trading of Certain Equities Derivatives).

<sup>8</sup> See, Securities Exchange Act Release No. 63097 (October 13, 2010), 75 FR 64767 (October 20, 2010) (SR-BYX-2010-002).

<sup>9</sup> See, Securities Exchange Act Release No. 69928 (July 3, 2013), 78 FR 41489 (July 10, 2013) (SR-NASDAQ-2013-094).

<sup>10</sup> See, Securities Exchange Act Release No. 54552 (September 29, 2006), 71 FR 59546 (October 10, 2006) (SR-Amex-2005-104) and Securities Exchange Act Release No. 54145 (July 14, 2006), 71 FR 41654 (July 21, 2006) (SR-Amex-2005-104).

Company Manual<sup>11</sup> or in its other rules.

In accordance with the rule numbering framework adopted by the Exchange in the Pillar Framework Filing,<sup>12</sup> each rule proposed herein would have the same rule numbers as the NYSE Arca Equities rules with which it conforms.

Finally, in the Pillar Framework Filing, the Exchange adopted rules grouped under proposed Rule 7P relating to equities trading.<sup>13</sup> The Exchange now proposes Rule 7.18 under Rule 7P relating to trading halts of securities traded pursuant to UTP on the Pillar platform. The Exchange's proposed Rule 7.18 is substantially identical (other than with respects[sic] to certain non-substantive and technical amendments described below) as NYSE Arca Equities Rule 7.18P.<sup>14</sup>

#### **Proposal to Trade Securities Pursuant to UTP**

The Exchange is proposing new Rule 5.1(a) to establish rules regarding the extension of UTP securities listed on other national securities exchanges. The Exchange currently only trades securities for which it is the listing exchange and that qualify under the requirements for listing

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<sup>11</sup> NYSE Listed Company Manual, <http://nysemanual.nyse.com/LCM/Sections/>.

<sup>12</sup> See, Securities Exchange Act Release No. 76803 (December 30, 2015), 81 FR 536 (January 6, 2016) (SR-NYSE-2015-67) (“Pillar Framework Filing”). The Exchange is using the same rule numbering framework as the NYSE Arca Equities rules and would consist of proposed Rules 1P – 13P. Rules 1P -13P would be operative for securities that are trading on the Pillar trading platform.

<sup>13</sup> The Pillar Framework Filing added Rules 7.5 and 7.6 for trading on the Pillar platform. Since trading on the Pillar platform will be under these new rules, the Exchange specified in the Pillar Framework Filing that current Exchange Rule 7 would not be applicable to trading on the Pillar trading platform. In addition, the Exchange added Rules 7.1 – Rule 7.44 on a “Reserved” basis, grouped under Rule 7P relating to equities trading on the Pillar platform. Id.

<sup>14</sup> See, NYSE Arca Equities Rule 7.18P. See, also, Securities Exchange Act Release No. 75467 (July 16, 2015), 80 FR 43515 (July 22, 2015) (SR-NYSEArca-2015-58), as amended by Amendment No. 1; Securities Exchange Act Release No. 76198A[sic] (October 20, 2015), 80 FR 65274 (October 26, 2015) (SR-NYSEArca-2015-58).

set forth in its Listed Company Manual. As proposed, the first sentence of new Rule 5.1(a) would allow the Exchange to trade securities eligible for UTP under Section 12(f) of the Exchange Act.<sup>15</sup> This proposed text is identical to Rules 14.1 of both BYX and EDGA Exchange, Inc. (“EDGA”).

Proposed Rule 5.1(a) would adopt rules reflecting requirements for trading products on the Exchange pursuant to UTP that have been established in various new product proposals previously approved by the Commission.<sup>16</sup> In addition, proposed Rule 5.1(a) would state that the securities the Exchange trades pursuant to UTP would be traded on the new Pillar trading platform under the rules applicable to such trading.<sup>17</sup> Accordingly, the Exchange would not trade UTP securities until its trading rules for the Pillar platform are effective.

Finally, proposed Rule 5.1(a)(1) would make clear that the Exchange would not list any ETPs, unless it filed a proposed rule change under Section 19(b)(2)<sup>18</sup> under the Act. Therefore, the provisions of proposed Rules 5P and 8P described below, which permit the listing of ETPs, would not be effective until the Exchange files a proposed rule change to amend its rules to

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<sup>15</sup> Section 12(f) of the Exchange Act . 15 U.S.C. 78l(f).

<sup>16</sup> See, NYSE Arca Equities Rule 5.1(a)(1) and Securities Exchange Act Release No. 67066 (May 29, 2012), 77 FR 33010 (June 4, 2012) (SR-NYSEArca-2012-46); BATS Rule 14.11 and Securities Exchange Act Release No. 58623 (September 23, 2008), 73 FR 57169 (October 1, 2008) (SR-BATS-2008-004); National Stock Exchange, Inc. (“NSX”) Rule 15.9 and Securities Exchange Act Release No. 57448 (March 6, 2008), 73 FR 13597 (March 13, 2008) (SR-NSX-2008-05); NASDAQ OMX PHLX LLC (“Phlx”) Phlx Rule 803(o) and Securities Exchange Act Release No. 57806 (May 9, 2008), 73 FR 28541 (May 16, 2008) (SR-Phlx2008-34); International Securities Exchange, LLC (“ISE”) ISE Rule 2101 and Securities Exchange Act Release No. 57387 (February 27, 2008), 73 FR 11965 (March 5, 2008) (SR-ISE-2007-99).

<sup>17</sup> See, Securities Exchange Act Release No. 76803 (December 30, 2015), 81 FR 536 (January 6, 2016) (SR-NYSE-2015-67). In this filing, the Exchange established the same rule numbering framework as the NYSE Arca Equities rules and would consist of proposed Rules 1P – 13P. The Exchange explained in this filing that Rules 1P -13P would be operative for securities that are trading on the Pillar trading platform.

<sup>18</sup> 15 U.S.C. 78s(b)(2).

comply with Rules 10A-3 and 10C-1 under the Act and to incorporate qualitative listing criteria, and such proposed rule change is approved by the Commission. This would require the Exchange to adopt rules relating to the independence of compensation committees and their advisors.<sup>19</sup>

### **UTP of Exchange Traded Products**

The Exchange proposes Rule 5.1(a)(2) to specifically govern trading of ETPs pursuant to UTP. Specifically, the requirements in subparagraphs (A)-(F) of proposed Rule 5.1(a)(2) would apply to ETPs traded pursuant to UTP on the Exchange.

Under proposed Rule 5.1(a)(2)(A), the Exchange would file a Form 19b-4(e) with the Commission with respect to each ETP<sup>20</sup> the Exchange trades pursuant to UTP within five days after commencement of trading.

The Exchange proposes Supplementary Material .01 to Rule 5.1(a) to allow the Exchange to trade, pursuant to UTP, any ETP that (1) was originally listed on another registered national securities exchange (“Other SRO”) and continues to be listed on such Other SRO; and (2) satisfies the Exchange’s continued listing criteria that are applicable to the product class that

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<sup>19</sup> On June 20, 2012, the Commission adopted Rule 10C-1 to implement Section 10C of the Act, as added by Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Rule 10C-1 under the Act directs each national securities exchange to prohibit the listing of any equity security of an issuer, with certain exceptions, that does not comply with the rule’s requirements regarding compensation committees of listed issuers and related requirements regarding compensation advisers. See, CFR 240.10C-1; Securities Act Release No. 9199, Securities Exchange Act Release No. 64149 (March 30, 2011), 76 FR 18966 (April 6, 2011) and Securities Exchange Act Release No. 67220 (June 20, 2012), 77 FR 38422 (June 27, 2012).

<sup>20</sup> Although Rule 19b-4(e) of the Act defines any type of option, warrant, hybrid securities product or any other security, other than a single equity option or a security futures product, whose value is based, in whole or in part, upon the performance of, or interest in, an underlying instrument, as a “new derivative securities product,” the Exchange prefers to refer to these types of products that it will be trading as “exchange traded products,” so as not to confuse investors with a term that can be deemed to imply such products are futures or options related.

would include such ETP. For the purposes of Supplementary Material .01 to proposed Rule 5.1(a), the term “Exchange Traded Product” would include securities described in proposed Rules 5.2(j)(2) (Equity Linked Notes); 5.2(j)(3) (Investment Company Units); 5.2(j)(4) (Index-Linked Exchangeable Notes); 5.2(j)(6) (Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities); 8.100 (Portfolio Depositary Receipts); and Supplementary Material .01 to Rule 8.200 (Trust Issued Receipts).

In addition, proposed Rule 5.1(a)(2)(B) would provide that the Exchange will distribute an information circular prior to the commencement of trading in such an ETP that generally would include the same information as the information circular provided by the listing exchange, including (a) the special risks of trading the ETP, (b) the Exchange’s rules that will apply to the ETP, including Rules 2090 and 2111,<sup>21</sup> and (c) information about the dissemination of value of the underlying assets or indices.

Under proposed Rule 5.1(a)(2)(D), the Exchange would halt trading in a UTP Exchange Traded Product in certain circumstances. Specifically, if a temporary interruption occurs in the calculation or wide dissemination of the intraday indicative value (or similar value) or the value of the underlying index or instrument and the listing market halts trading in the product, the Exchange, upon notification by the listing market of such halt due to such temporary interruption, also would immediately halt trading in that product on the Exchange. If the intraday indicative value (or similar value) or the value of the underlying index or instrument continues not to be calculated or widely available as of the commencement of trading on the Exchange on the next business day, the Exchange would not commence trading of the product that day. If an

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<sup>21</sup> See, Rule 2090 (the Exchange’s Know Your Customer Rule) and Rule 2111 (the Exchange’s Suitability Rule). See, also, SR-NYSE-2016-33.

interruption in the calculation or wide dissemination of the intraday indicative value (or similar value) or the value of the underlying index or instrument continues, the Exchange could resume trading in the product only if calculation and wide dissemination of the intraday indicative value (or similar value) or the value of the underlying index or instrument resumes or trading in such series resumes in the listing market. The Exchange also would halt trading in a UTP Exchange Traded Product listed on the Exchange for which a net asset value (and in the case of managed fund shares or actively managed exchange-traded funds, a “disclosed portfolio”) is disseminated if the Exchange became aware that the net asset value or, if applicable, the disclosed portfolio was not being disseminated to all market participants at the same time. The Exchange would maintain the trading halt until such time as the Exchange became aware that the net asset value and, if applicable, the disclosed portfolio was available to all market participants.

Finally, the Exchange represents that its surveillance procedures for ETPs traded on the Exchange pursuant to UTP would be similar to the procedures used for equity securities traded on the Exchange and would incorporate and rely upon existing Exchange surveillance systems.

Proposed Rules 5.1(a)(2)(C) and (E) would establish the following requirements for member organizations that have customers that trade UTP Exchange Traded Products:

- Prospectus Delivery Requirements. Proposed Rule 5.1(a)(2)(C)(i) would remind member organizations that they are subject to the prospectus delivery requirements under the Securities Act of 1933, as amended (the “Securities Act”), unless the ETP is the subject of an order by the Commission exempting the product from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940, as amended (the “1940 Act”), and the product is not otherwise

subject to prospectus delivery requirements under the Securities Act.

Member organizations would also be required to provide a prospectus to a customer requesting a prospectus.<sup>22</sup>

- Written Description of Terms and Conditions. Proposed Rule 5.1(a)(2)(C)(ii) would require member organizations to provide a written description of the terms and characteristics of UTP Exchange Traded Products to purchasers of such securities, not later than the time of confirmation of the first transaction, and with any sales materials relating to UTP Exchange Traded Products.
- Market Maker Restrictions. Proposed Rule 5.1(a)(E) would establish certain restrictions for any member organization registered as a market maker in an ETP that derives its value from one or more currencies, commodities, or derivatives based on one or more currencies or commodities, or is based on a basket or index composed of currencies or commodities (collectively, “Reference Assets”). Specifically, such a member organization must file with the Exchange and keep current a list identifying all accounts for trading the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives, which the member organization acting as registered market maker may have or over which it may exercise investment discretion.<sup>23</sup> If

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<sup>22</sup> Proposed Rule 5.1(a)(2)(C)(iii).

<sup>23</sup> The proposed rule would also, more specifically, require a market maker to file with the Exchange and keep current a list identifying any accounts (“Related Instrument Trading Accounts”) for which related instruments are traded (1) in which the market maker holds an interest, (2) over which it has investment discretion, or (3) in which it shares in the

an account in which a member organization acting as a registered market maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, has not been reported to the Exchange as required by this Rule, a member organization acting as registered market maker in the ETP would be permitted to trade in the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives. Finally, a market maker could not use any material nonpublic information in connection with trading a related instrument.

### **Proposed Requirements for Exchange Traded Products**

#### *Definitions & Terms of Use*

The Exchange proposes to define the term “exchange traded product” in Rule 1.1(bbb). Proposed Rule 1.1(bbb) would define the term “Exchange Traded Product” to mean a security that meets the definition of “derivative securities product” in Rule 19b-4(e) under the Securities Exchange Act of 1934 and a “UTP Exchange Traded Product” to mean an Exchange Traded Product that trades on the Exchange pursuant to unlisted trading privileges.<sup>24</sup> The Exchange proposes to use the term Exchange Traded Product instead of “derivative securities product,” because it believes that the term “Exchange Traded Product” more accurately describes the types of products the Exchange proposes to trade and is less likely to confuse investors by using a term that implies such products are futures or options related.

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profits and/or losses. In addition, a market maker would not be permitted to have an interest in, exercise investment discretion over, or share in the profits and/or losses of a Related Instrument Trading Account that has not been reported to the Exchange as required by the proposed rule.

<sup>24</sup> This proposed definition is identical to the definition of “Derivative Securities Product” in NYSE Arca Equities Rule 1.1(bbb).

Next, the Exchange proposes to add the definitions contained in NYSE Arca Equities Rule 5.1(b) that are relevant to the ETP listing and trading rules the Exchange proposes in this filing, which are described below. To maintain consistency in rule references between the Exchange’s proposed rules and NYSE Arca Equities’ rules, the Exchange proposes to Reserve subparagraphs to the extent it is not now proposing certain definitions from NYSE Arca Equities Rule 5.1(b).<sup>25</sup> Other than a non-substantive difference to use the term “Exchange” instead of “Corporation, “NYSE Arca Marketplace,” or “NYSE Arca Parent,” the terms defined in this proposed Rule 5.1(b) would have the identical meanings to the terms used in NYSE Arca Equities Rule 5.1(b).

Finally, the Exchange proposes to make the following substitutions in its proposed rules for terms used in the NYSE Arca Equities ETP listing and trading rules (collectively, the “General Definitional Term Changes”):

- Because the Exchange uses the term “Supplementary Material” to refer to commentaries to its Rules, the Exchange proposes to substitute this term where “Commentary” is used in the rules of NYSE Arca Equities;
- Because the Exchange tends to use the term “will” to impose obligations or duties on its members and member organizations, the Exchange proposes to substitute this term where “shall” is used in the rules of NYSE Arca Equities;
- Because members of the Exchange, as defined in Rule 2, are referred to as “member organizations” under the Exchange’s rules, the Exchange

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<sup>25</sup> The Exchange is proposing to Reserve paragraphs (b)(3), (b)(7), (b)(8), (b)(10), (b)(17) and (b)(19) of proposed Rule 5.1(b), because the terms used in the parallel provisions of the NYSE Arca Equities rules would not be used in the listing and trading requirements for ETPs that the Exchange is proposing in this filing.

proposes to substitute this term where “ETP Holder”<sup>26</sup> is used in the rules of NYSE Arca Equities;

- The Exchange proposes to use the term “Exchange”<sup>27</sup> instead of “Corporation, “NYSE Arca Marketplace,” or “NYSE Arca Parent;”
- The Exchange is proposing to substitute in its proposed rules the phrase “member organization registered as a market maker on the Exchange” for the term “Market Maker,”<sup>28</sup> as defined in the rules of NYSE Arca Equities;
- Because the Exchange’s hours for business are described in Rule 51 and the Exchange’s rules do not use a defined term to refer to such hours, the Exchange is proposing to refer to its core trading hours as the “Exchange’s normal trading hours,” and substitute this phrase for “Core Trading Session” and “Core Trading Hours,” as defined in the rules of NYSE Arca Equities;
- Because the Exchange’s rules pertaining to trading halts due to extraordinary market volatility are described in Rule 80B, the Exchange is

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<sup>26</sup> The term “member,” when used with respect to a national securities exchange, is defined in Section 3(a)(3)(A) of the Act to mean any registered broker or dealer with which such a natural person is associated. NYSE Arca Equities Rule 1.1(m) defines “ETP” as an Equity Trading Permit issued by the Corporation for effecting approved securities transactions on the Corporation’s Trading Facilities. See, also, NYSE Arca Equities Rule 1.1(n).

<sup>27</sup> Under Rule 1, the term “the Exchange,” when used with reference to the administration of any rule, means the New York Stock Exchange LLC or the officer, employee, person, entity or committee to whom appropriate authority to administer such rule has been delegated by the Exchange.

<sup>28</sup> NYSE Arca Equities Rule 1.1(v) defines “Market Maker” as an ETP Holder that acts as a market maker pursuant to NYSE Arca Equities Rule 7 (Equities Trading).

proposing to refer to Rule 80B in its proposed rules wherever NYSE Arca Equities Rule 7.12<sup>29</sup> is referenced in the rules of NYSE Arca Equities proposed in this filing;

- Because the Exchange’s rules pertaining to the mechanics of the limit-up-limit down plan as it relates to trading pauses in individual securities due to extraordinary market volatility are described in Rule 80C, the Exchange is proposing to refer to Rule 80C in its proposed rules wherever NYSE Arca Equities Rule 7.11P<sup>30</sup> is referenced in the rules of NYSE Arca Equities proposed in this filing; and
- Because NYSE Arca Equities Rule 7.18P<sup>31</sup> establishes the requirements for trading halts in securities traded on the Pillar trading platform, and the Exchange is proposing new Rule 7.18 in this filing, based on NYSE Arca Equities Rule 7.18P, the Exchange is proposing to refer to Rule 7.18 in its proposed rules wherever NYSE Arca Equities Rule 7.34 is referenced in the rules of NYSE Arca Equities proposed in this filing.

*Listing and Trading Requirements for ETPs*

If an exchange has approved trading rules, procedures and listing standards in place that have been approved by the Commission for the product class that would include a new derivative securities product, the listing and trading of such “new derivative securities product,” does not

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<sup>29</sup> Exchange Rule 80B is substantially identical to NYSE Arca Equities Rule 7.12, which pertains to Trading Halts Due to Extraordinary Market Volatility.

<sup>30</sup> Exchange Rule 80C is substantially identical to NYSE Arca Equities Rule 7.11P, which pertains to the Limit Up-Limit Down Plan and Trading Pauses In Individual Securities Due to Extraordinary Market Volatility.

<sup>31</sup> See supra note 14.

require a proposed rule change under Section 19b-4 of the Act. The Exchange would, however, have to file a Form 19b-4(e) with the Commission to trade these ETPs. For this purpose, the Exchange is proposing substantially identical rules to those of NYSE Arca Equities for the qualification, listing and delisting of companies on the Exchange applicable to the ETPs.<sup>32</sup>

#### Proposed Rule 5P – Securities Traded

The Exchange proposes to add Rules 5.2(j)(2) – (j)(7), which would be substantially identical to NYSE Arca Equities Rules 5.2(j)(2)-(j)(7). These proposed rules would permit the Exchange to trade pursuant to UTP the following:

- Equity Linked Notes that meet the listing and trading requirements in proposed Rule 5.2(j)(2);
- Investment Company Units that meet the listing and trading requirements in proposed Rule 5.2(j)(3);
- Index-Linked Exchangeable Notes that meet the listing and trading requirements in proposed Rule 5.2(j)(4);
- Equity Gold Shares that meet the listing and trading requirements in proposed Rule 5.2(j)(5);
- Equity Index Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities that meet the listing and trading requirements in proposed Rule 5.2(j)(6); and
- Trust Certificates that meet the listing and trading requirements in proposed Rule 5.2(j)(7).

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<sup>32</sup> Each proposed NYSE Rule corresponds to the same rule number as the NYSE Arca Equities rules with which it conforms.

The text of these proposed rules is identical to NYSE Arca Equities Rules 5.2(j)(2)-5.2(j)(7), other than certain non-substantive and technical differences explained below.

The Exchange proposes to Reserve paragraphs 5.2(a)-(i)<sup>33</sup> and (j)(1),<sup>34</sup> to maintain the same rule numbers as the NYSE Arca rules with which it conforms.

*Proposed Rule 5.2(j)(2) – Equity Linked Notes (“ELNs”)*

The Exchange is proposing Rule 5.2(j)(2) to provide listing and trading requirements for ELNs, so that they may be traded on the Exchange pursuant to UTP.

Other than with respect to the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE Arca Equities Rule 5.2(j)(2).<sup>35</sup>

*Proposed Rule 5.2(j)(3) – Investment Company Units*

The Exchange is proposing Rule 5.2(j)(3) to provide listing and trading requirements for investment company units, so that they may be traded on the Exchange pursuant to UTP.

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<sup>33</sup> NYSE Arca Equities Rules 5.2(a) pertains to applications for admitting securities to list on NYSE Arca and NYSE Arca Equities Rule 5.2(b) pertains to NYSE Arca’s unique two-tier listing structure. As these rules pertain to specific listing criteria for NYSE Arca and not trading ETPs pursuant to UTP, the Exchange is not proposing similar rules.

Because NYSE Arca Equities Rules 5.2(c)-(g) relate to listing standards for securities that are not ETPs, the Exchange’s listing rules contained in the NYSE Listed Company Manual would apply and it is not proposing rule changes related to such securities.

Finally, NYSE Arca Equities Rule 5.2(h) pertains to Unit Investment Trusts (“UITs”). The Exchange proposes to trade any UITs pursuant to UTP under proposed Rule 5.2(j)(3) (Investment Company Units) or proposed Rule 8.100 (Portfolio Depository Receipts).

<sup>34</sup> NYSE Arca Equities Rule 5.2(j)(1) pertains to “Other Securities” that are not otherwise covered by the requirements contained in the other listing rules of NYSE Arca Equities. As the Exchange is proposing only the rules that are necessary for the Exchange to trade ETPs pursuant to UTP, the Exchange is not proposing a rule comparable to NYSE Arca Equities 5.2(j)(1).

<sup>35</sup> See, NYSE Arca Equities Rule 5.2(j)(2). See, also, Securities Exchange Act Release No. 50319 (September 7, 2004), 69 FR 55204 (September 13, 2004) (SR-PCX-2004-75); Securities Exchange Act Release No. 56924 (December 7, 2007), 72 FR 70918 (December 13, 2007) (SR-NYSEArca-2007-98); Securities Exchange Act Release No. 58745 (October 7, 2008), 73 FR 60745 (October 14, 2008) (SR-NYSEArca-2008-94).

Other than with respect to the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE Arca Equities Rule 5.2(j)(3).<sup>36</sup>

Proposed Rule 5.2(j)(4) – Index-Linked Exchangeable Notes

The Exchange is proposing Rule 5.2(j)(4) to provide listing and trading requirements for index-linked exchangeable notes, so that they may be traded on the Exchange pursuant to UTP.

In addition to the General Definitional Term Changes described above, the Exchange is proposing the following non-substantive changes between this proposed rule and NYSE Arca Equities Rule 5.2(j)(4):<sup>37</sup>

- To qualify for listing and trading under NYSE Arca Equities Rule 5.2(j)(4), an index-linked exchangeable note and its issuer must meet the criteria in NYSE Arca Equities Rule 5.2(j)(1) (Other Securities), except that the minimum public distribution will be 150,000 notes with a minimum of 400 public note-holders, except, if traded in thousand dollar denominations then there is no minimum public distribution and number of holders.

Because the Exchange does not have and is not proposing a rule for “Other Securities” comparable to NYSE Arca Rule 5.2(j)(1), the Exchange proposes to reference NYSE Arca Equities Rule 5.1(j)(1) in subparagraphs (a) and (c) of proposed Rule 5.2(j)(4) in establishing the

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<sup>36</sup> See, NYSE Arca Equities Rule 5.2(j)(3). See, also, Securities Exchange Act Release No. 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR-PCX-2001-14); Securities Exchange Act Release No. 40603 (November 3, 1998), 63 FR 59354 (November 3, 1998) (SR-PCX-98-29).

<sup>37</sup> See NYSE Arca Equities Rule 5.2(j)(4). See, also, Securities Exchange Act Release No. 49532 (April 7, 2004), 69 FR 19593 (April 13, 2004) (SR-PCX-2004-01).

criteria that an issuer and issue must satisfy.<sup>38</sup>

- To qualify for listing and trading under NYSE Arca Equities Rule 5.2(j)(4), an index to which an exchangeable note is linked and its underlying securities must meet (i) the procedures in NYSE Arca Options Rules 5.13(b)-(c); or (ii) the criteria set forth in subsections (C) and (D) of NYSE Arca Equities Rule 5.2(j)(2), the index concentration limits set forth in NYSE Arca Options Rule 5.13(b)(6), and Rule 5.13(b)(12) insofar as it relates to Rule 5.13(b)(6).<sup>39</sup> Because the Exchange does not have and is not proposing a rule for listing of index option contracts comparable to NYSE Arca Options Rule 5.13, the Exchange proposes to reference NYSE Arca Options Rule 5.13 in paragraph (d) of proposed Rule 5.2(j)(4).<sup>40</sup> The Exchange would apply the criteria set forth in NYSE Arca Options Rule 5.13 in determining whether an index underlying an index-linked exchangeable note satisfies the requirements of Rule 5.2(j)(4)(d).
- Correction of a typographical error in NYSE Arca Equities Rule 5.2(j)(4)(f)(iii), so that proposed Rule 5.2(j)(4)(f)(iii) reads “further dealings on the Exchange,” rather than “further dealings of the Exchange,” as is currently drafted in NYSE Arca Equities Rule 5.2(j)(4)(f)(iii).

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<sup>38</sup> The Exchange will monitor for any changes to the rules of NYSE Arca, and will amend its rules accordingly to conform to the rules of NYSE Arca. The Exchange notes that it is proposing to cross-reference to the rules of an affiliate of the Exchange, which will facilitate monitoring for changes to such rules.

<sup>39</sup> NYSE Arca Options Rule 5.13 sets forth criteria for narrow-based and micro narrow-based indexes on which an options contract may be listed without filing a proposed rule change under Section 19(b) of the Exchange Act.

<sup>40</sup> See supra note 38.

Proposed Rule 5.2(j)(5) – Equity Gold Shares

The Exchange is proposing Rule 5.2(j)(5) to provide listing and trading requirements for equity gold shares, so that they may be traded on the Exchange pursuant to UTP.

Other than with respect to the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE Arca Equities Rule 5.2(j)(5).<sup>41</sup>

Proposed Rule 5.2(j)(6) – Index-Linked Securities Listing Standards

The Exchange is proposing Rule 5.2(j)(6) to provide listing and trading requirements for equity index-linked securities, so that they may be traded on the Exchange pursuant to UTP.

In addition to the General Definitional Term Changes described above, the Exchange is proposing the following non-substantive changes between this proposed rule and NYSE Arca Equities Rule 5.2(j)(6):<sup>42</sup>

- To qualify for listing and trading under NYSE Arca Equities Rule 5.2(j)(6), both the issuer and issuer of an index-linked security must meet the criteria in NYSE Arca Equities Rule 5.2(j)(1) (Other Securities), with certain specified exceptions. Because the Exchange does not have and is not proposing a rule for “Other Securities” comparable to NYSE Arca Rule 5.1(j)(1), the Exchange proposes to reference NYSE Arca Equities Rule 5.1(j)(1) in proposed Rule 5.2(j)(6)(A)(a) establishing the criteria

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<sup>41</sup> See, NYSE Arca Equities Rule 5.2(j)(5); See, also, Securities Exchange Act Release No. 51245 (February 23, 2005), 70 FR 10731 (March 4, 2005) (SR-PCX-2004-117).

<sup>42</sup> See, NYSE Arca Equities Rule 5.2(j)(6); See, also, Securities Exchange Act Release No. 54231 (July 27, 2006), 71 FR 44339 (August 4, 2006) (SR-NYSEArca-2006-19); Securities Exchange Act Release No. 59332 (January 30, 2009), 74 FR 6338 (February 6, 2009) (SR-NYSEArca-2008-136); Securities Exchange Act Release No. 52204 (August 3, 2005), 70 FR 46559 (August 10, 2005) (SR-PCX-2005-63).

that an issue and issuer must satisfy.<sup>43</sup>

- The listing standards for Equity Index-Linked Securities in NYSE Arca Equities Rule 5.2(j)(6) reference NYSE Arca Options Rule 5.3<sup>44</sup> in describing the criteria for securities that compose 90% of an index's numerical value and at least 80% of the total number of components. Because the Exchange does not have and is not proposing a rule comparable to NYSE Arca Options Rule 5.3, the Exchange proposes to reference to NYSE Arca Options Rule 5.3<sup>45</sup> in paragraph (B)(I)(1)(b)(2)(iv) of proposed Rule 5.2(j)(6) establishing the initial listing criteria that an index must meet.<sup>46</sup>

Proposed Rule 5.2(j)(7) – Trust Certificates

The Exchange is proposing Rule 5.2(j)(7) to provide listing and trading requirements for trust certificates, so that they may be traded on the Exchange pursuant to UTP.

In addition to the General Definitional Term Changes described above, the Exchange is proposing the following non-substantive change between this proposed rule and NYSE Arca Equities Rule 5.2(j)(7):<sup>47</sup>

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<sup>43</sup> See supra note 38.

<sup>44</sup> NYSE Arca Options Rule 5.3 establishes the criteria for underlying securities of put and call option contracts listed and traded on NYSE Arca.

<sup>45</sup> NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(2)(iv) references “Rule 5.3,” but is not clear as to whether the reference is to the rules of NYSE Arca Equities or the rules of NYSE Arca Options. The Exchange proposes to specify in its rule that the reference is to NYSE Arca Options Rule 5.3.

<sup>46</sup> See supra note 38.

<sup>47</sup> See, NYSE Arca Equities Rule 5.2(j)(7); See, also, Securities Exchange Act Release No. 59051 (December 4, 2008), 73 FR 75155 (December 10, 2008) (SR-NYSEArca-2008-123); Securities Exchange Act Release No. 58920 (November 7, 2008), 73 FR 68479 (November 18, 2008) (SR-NYSEArca-2008-123).

- Commentary .08 to NYSE Arca Equities Rule 5.2(j)(7) contains a cross-reference to NYSE Arca Rule 9.2.<sup>48</sup> Because the Exchange does not currently have and is not proposing to add rules that pertain to the opening of accounts that are approved for options trading, the Exchange proposes to require a member organization to ensure that the account of a holder of a Trust Certificate that is exchangeable, at the holder's option, into securities that participate in the return of the applicable underlying asset is approved for options trading in accordance with the rules of a national securities exchange.

#### Proposed Rule 8P – Trading of Certain Exchange Traded Products

The Exchange proposes to add Rule 8P, which would be substantially identical to Sections 1 and 2 of NYSE Arca Equities Rule 8. These proposed rules would permit the Exchange to trade pursuant to UTP the following: Currency and Index Warrants, Portfolio Depositary Receipts, Trust Issued Receipts, Commodity-Based Trust Shares, Currency Trust Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, Paired Trust Shares, Trust Units, Managed Fund Shares, and Managed Trust Securities.<sup>49</sup>

The Exchange proposes to Reserve Rule 8.100(g), to maintain the same rule numbers as the NYSE Arca rules with which it conforms.

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<sup>48</sup> Commentary .08 to NYSE Arca Equities Rule 5.2(j)(7) states that Trust Certificates may be exchangeable at the option of the holder into securities that participate in the return of the applicable underlying asset. In the event that the Trust Certificates are exchangeable at the option of the member organization and contains an Index Warrant, then the member organization must ensure that the member organization's account is approved in accordance with Rule 9.2 in order to exercise such rights.

<sup>49</sup> The Exchange is only proposing listing and trading rules necessary to trade ETPs pursuant to UTP. Accordingly, the Exchange is not proposing a rule comparable to NYSE Arca Equities Rule 8.100(g).

The text of Proposed Rule 8P is identical to Sections 1 and 2 of NYSE Arca Equities Rule 8, other than certain non-substantive and technical differences explained below. The Exchange also proposes that all of the General Definitional Term Changes described under proposed Rule 5P above would also apply to proposed Rule 8P.

*Proposed Rules 8.1 – 8.13 – Currency and Index Warrants*

The Exchange is proposing Rules 8.1-8.13 to provide listing and trading requirements (including sales-practice rules such as those relating to suitability and supervision of accounts) for currency and index warrants, so that they may be traded on the Exchange pursuant to UTP.<sup>50</sup>

In addition to the General Definitional Term Changes described above under proposed Rule 5P, the Exchange is proposing the following non-substantive changes between these proposed rules and NYSE Arca Equities Rules 8.1-8.13 (Currency and Index Warrants):

Proposed Rule 8.1 – General

- Other than with respect to the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE Arca Equities Rule 8.1.

Proposed Rule 8.2– Definitions

- Other than with respect to the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE Arca Equities Rule 8.2.

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<sup>50</sup> NYSE Arca Equities Rules 8.1-8.13 all pertain to the listing and trading requirements (including sales-practice rules such as those relating to suitability and supervision of accounts) for Currency and Index Warrants. See, Section 1 of NYSE Arca Equities Rule 8; See, also, Securities Exchange Act Release Nos. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR-PCX-00-25); 59886 (May 7, 2009), 74 FR 22779 (May 14, 2009) (SR-NYSEArca-2009-39).

### Proposed Rule 8.3 – Listing of Currency and Index Warrants

- NYSE Arca Equities Rule 8.3 references NYSE Arca Equities Rule 5.2(c) to establish the earnings requirements that a warrant issuer is required to substantially exceed. Because the Exchange does not currently have and is not proposing a rule similar to NYSE Arca Equities Rule 5.2(c), the Exchange proposes to include the earnings requirements set forth in Rule 5.2(c) in subparagraph (a) of proposed Rule 8.3.

### Proposed Rule 8.4 – Account Approval

- The account approval rules of NYSE Arca Equities Rule 8.4 reference NYSE Arca Equities Rule 9.18(b)<sup>51</sup> in describing the criteria that must be met for opening up a customer account for options trading. In proposed Rule 8.4, the Exchange would cross-reference NYSE Arca Equities Rule 9.18(b), which governs doing a public business in options because the Exchange does not trade options and, thus, does not have a comparable rule. As noted earlier, the Exchange will monitor for any changes to this NYSE Arca Equities rule and would update Exchange rules to conform to any changes to NYSE Arca Equities Rules 9.18(b).<sup>52</sup>

### Proposed Rule 8.5 – Suitability

- The account suitability rules of NYSE Arca Equities Rule 8.5 reference

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<sup>51</sup> NYSE Arca Equities Rule 9.18(b) establishes criteria that must be met to open up a customer account for options trading.

<sup>52</sup> See supra note 38.

NYSE Arca Equities Rule 9.18(c)<sup>53</sup> in describing rules that apply to recommendations made in stock index, currency index and currency warrants. In proposed Rule 8.5, the Exchange would cross-reference NYSE Arca Equities Rule 9.18(c), which governs doing a public business in options because the Exchange does not trade options and, thus, does not have a comparable rule. As noted earlier, the Exchange will monitor for any changes to this NYSE Arca Equities rule and would update Exchange rules to conform to any changes to NYSE Arca Equities Rules 9.18(c).<sup>54</sup>

#### Proposed Rule 8.6 – Discretionary Accounts

- The rules of NYSE Arca Equities Rule 8.6 reference the fact that NYSE Arca Equities Rule 9.6(a)<sup>55</sup> will not apply to customer accounts insofar as they may relate to discretion to trade in stock index, currency index and currency warrants, and that NYSE Arca Equities Rule 9.18(e)<sup>56</sup> will apply to such discretionary accounts instead. The Exchange’s discretionary account rule that is equivalent to NYSE Arca Equities Rule 9.6(a) is Rule 408.<sup>57</sup> Accordingly, the Exchange proposes to cross-reference to Rule 408 in proposed Rule 8.6, to establish that the discretionary account rules of

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<sup>53</sup> NYSE Arca Equities Rule 9.18(c) establishes suitability rules that pertain to recommendations in stock index, currency index and currency warrants.

<sup>54</sup> See supra note 38.

<sup>55</sup> NYSE Arca Equities Rule 9.6(a) establishes rules pertaining to discretion as to customer accounts for equity trading.

<sup>56</sup> NYSE Arca Equities Rule 9.18(e) establishes rules pertaining to discretion as to customer accounts for options trading.

<sup>57</sup> See Rule 408 pertaining to the rules of the Exchange with regard to discretionary power in customer accounts.

Rule 408 would not apply to stock index, currency index and currency warrants.

#### Proposed Rule 8.7 – Supervision of Accounts

- The account supervision rules of NYSE Arca Equities Rule 8.7 reference NYSE Arca Equities Rule 9.18(d)<sup>58</sup> in describing rules that apply to the supervision of customer accounts in which transactions in stock index, currency index or currency warrants are effected. In proposed Rule 8.6, the Exchange would cross-reference NYSE Arca Equities Rule 9.18(d), which governs doing a public business in options because the Exchange does not trade options and, thus, does not have a comparable rule. As noted earlier, the Exchange will monitor for any changes to this NYSE Arca Equities rule and would update Exchange rules to conform to any changes to NYSE Arca Equities Rules 9.18(d).<sup>59</sup>

#### Proposed Rule 8.8 – Customer Complaints

- The customer complaint rules of NYSE Arca Equities Rule 8.8 reference NYSE Arca Equities Rule 9.18(l)<sup>60</sup> in describing rules that apply to customer complaints received regarding stock index, currency index or currency warrants. In proposed Rule 8.8, the Exchange would cross-reference NYSE Arca Equities Rule 9.18(l), which governs doing a public

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<sup>58</sup> NYSE Arca Equities Rule 9.18(d) establishes account supervision rules that apply to the supervision of customer accounts in which transactions in stock index, currency index and currency warrants are effected.

<sup>59</sup> See supra note 38.

<sup>60</sup> NYSE Arca Equities Rule 9.18(l) establishes rules that apply to customer complaints received regarding stock index, currency index or currency warrants.

business in options because the Exchange does not trade options and, thus, does not have a comparable rule. As noted earlier, the Exchange will monitor for any changes to this NYSE Arca Equities rule and would update Exchange rules to conform to any changes to NYSE Arca Equities Rules 9.18(1).<sup>61</sup>

#### Proposed Rule 8.9 – Prior Approval of Certain Communications to Customers

- The rules pertaining to communications to customers regarding stock index, currency index and currency warrants described in NYSE Arca Equities Rule 8.9 reference NYSE Arca Equities Rule 9.28.<sup>62</sup> In proposed Rule 8.8, the Exchange would cross-reference NYSE Arca Equities Rule 9.28, which governs advertisements, market letters and sales literature relating to options because the Exchange does not trade options and, thus, does not have a comparable rule. As noted earlier, the Exchange will monitor for any changes to this NYSE Arca Equities rule and would update Exchange rules to conform to any changes to NYSE Arca Equities Rules 9.28.<sup>63</sup>

#### Proposed Rule 8.10 – Position Limits

- Other than with respect to the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE Arca Equities Rule 8.10.

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<sup>61</sup> See supra note 38.

<sup>62</sup> NYSE Arca Equities Rule 9.28 establishes rules regarding advertisements, sales literature and educational material issued to any customer or member of the public pertaining to stock index, currency index or currency warrants.

<sup>63</sup> See supra note 38.

#### Proposed Rule 8.11 – Exercise Limits

- Other than with respect to the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE Arca Equities Rule 8.11.

#### Proposed Rule 8.12 – Trading Halts or Suspensions

- Other than with respect to the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE Arca Equities Rule 8.12.

#### Proposed Rule 8.13 – Reporting of Warrant Positions

- The Exchange proposes to correct a typographical error in NYSE Arca Equities Rule 8.13. Proposed Rule 8.13 would read “whenever a report shall be required to be filed with respect to an account pursuant to this Rule, the member organization filing the report shall file with the Exchange such additional periodic reports with respect to such account as the Exchange may from time to time prescribe,” rather than “whenever a report shall be required to be filed with respect to an account pursuant to this Rule, the member organization filing the same file with the Exchange such additional periodic reports with respect to such account as the Exchange may from time to time prescribe,” as in current NYSE Arca Equities Rule 8.13.

#### *Proposed Rule 8.100 – Portfolio Depositary Receipts*

The Exchange is proposing Rule 8.100 to provide listing and trading requirements for portfolio depositary receipts, so that they may be traded on the Exchange pursuant to UTP.

Other than with respect to the General Definitional Term Changes described above under proposed Rule 5P, there are no differences between this proposed rule and NYSE Arca Equities Rule 8.100.<sup>64</sup>

*Proposed Rule 8.200 – Trust Issued Receipts*

The Exchange is proposing Rule 8.200 to provide listing and trading requirements for trust issued receipts, so that they may be traded on the Exchange pursuant to UTP.

Other than with respect to the General Definitional Term Changes described above under proposed Rule 5P, there are no differences between this proposed rule and NYSE Arca Equities Rule 8.200.<sup>65</sup>

*Proposed Rule 8.201 – Commodity-Based Trust Shares*

The Exchange is proposing Rule 8.201 to provide listing and trading requirements for commodity-based trust shares, so that they may be traded on the Exchange pursuant to UTP.

Other than with respect to the General Definitional Term Changes described above under proposed Rule 5P, there are no differences between this proposed rule and NYSE Arca Equities Rule 8.201.<sup>66</sup>

*Proposed Rule 8.202 – Currency Trust Shares*

The Exchange is proposing Rule 8.202 to provide listing and trading requirements for

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<sup>64</sup> See, NYSE Arca Equities Rule 8.100; See, also, Securities Exchange Act Release No. 39461 (December 17, 1997), 62 FR 67674 (December 29, 1997) (SR-PCX-97-35); Securities Exchange Act Release No. 39188 (October 2, 1997), 62 FR 53373 (October 14, 1997) (SR-PCX-97-35); Securities Exchange Act Release No. 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR-PCX-2001-14).

<sup>65</sup> See, NYSE Arca Equities Rule 8.200; See, also, Securities Exchange Act Release No. 58162 (July 15, 2008), 73 FR 42391 (July 21, 2008) (SR-NYSEArca-2008-73); Securities Exchange Act Release No. 44182 (April 16, 2001), 66 FR 21798 (April 16, 2001) (SR-PCX-2001-01).

<sup>66</sup> See, NYSE Arca Equities Rule 8.201; See, also, Securities Exchange Act Release No. 51067 (January 21, 2005), 70 FR 3952 (January 27, 2005) (SR-PCX-2004-132).

currency trust shares, so that they may be traded on the Exchange pursuant to UTP.

Other than with respect to the General Definitional Term Changes described above under proposed Rule 5P, there are no differences between this proposed rule and NYSE Arca Equities Rule 8.202.<sup>67</sup>

*Proposed Rule 8.203 – Commodity Index Trust Shares*

The Exchange is proposing Rule 8.203 to provide listing and trading requirements for commodity index trust shares, so that they may be traded on the Exchange pursuant to UTP.

In addition to the General Definitional Term Changes described above, the Exchange is proposing the following non-substantive change between this proposed rule and NYSE Arca Equities Rule 8.203:<sup>68</sup>

- Correction of a typographical error in NYSE Arca Equities Rule 8.203(d), so that proposed Rule 8.203(d) reads “one or more” in the first sentence, rather than “one more more,” as is currently drafted in NYSE Arca Equities Rule 8.203(d).

*Proposed Rule 8.204 – Commodity Futures Trust Shares*

The Exchange is proposing Rule 8.204 to provide listing and trading requirements for commodity futures trust shares, so that they may be traded on the Exchange pursuant to UTP.

Other than with respect to the General Definitional Term Changes described above under proposed Rule 5P, there are no differences between this proposed rule and NYSE Arca Equities

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<sup>67</sup> See, NYSE Arca Equities Rule 8.202; See, also, Securities Exchange Act Release No. 60065 (June 8, 2009), 74 FR 28310 (June 15, 2009) (SR-NYSEArca-2009-47); Securities Exchange Act Release No. 53253 (February 8, 2006), 71 FR 8029 (February 15, 2006) (SR-PCX-2005-123).

<sup>68</sup> See, NYSE Arca Equities Rule 8.203; See, also, Securities Exchange Act Release No. 54025 (June 21, 2006), 71 FR 36856 (June 28, 2006) (SR-NYSEArca-2006-12).

Rule 8.204.<sup>69</sup>

Proposed Rule 8.300 – Partnership Units

The Exchange is proposing Rule 8.300 to provide listing and trading requirements for partnership units, so that they may be traded on the Exchange pursuant to UTP.

Other than with respect to the General Definitional Term Changes described above under proposed Rule 5P, there are no differences between this proposed rule and NYSE Arca Equities Rule 8.300.<sup>70</sup>

Proposed Rule 8.400 – Paired Trust Shares

The Exchange is proposing Rule 8.400 to provide listing and trading requirements for paired trust shares, so that they may be traded on the Exchange pursuant to UTP.

In addition to the General Definitional Term Changes described above, the Exchange is proposing the following non-substantive change between this proposed rule and NYSE Arca Equities Rule 8.400:<sup>71</sup>

- To be consistent with the Exchange’s definitions proposed in Rule 5.1(b), the Exchange proposes to substitute the terms “security” and “equity securities” (as such terms are defined in proposed Rule 5.1(b)<sup>72</sup>) in

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<sup>69</sup> See, NYSE Arca Equities Rule 8.204; See, also, Securities Exchange Act Release No. 57838 (May 20, 2008), 73 FR 30649 (May 28, 2008) (SR-NYSEArca-2008-09); Securities Exchange Act Release No. 57636 (April 8, 2008), 73 FR 20344 (April 15, 2008) (SR-NYSEArca-2008-09).

<sup>70</sup> See, NYSE Arca Equities Rule 8.300; See, also, Securities Exchange Act Release No. 53875 (May 25, 2006), 71 FR 32164 (January 2, 2006) (SR-NYSEArca-2006-11).

<sup>71</sup> See, NYSE Arca Equities Rule 8.400; See, also, Securities Exchange Act Release No. 55033 (December 29, 2006), 72 FR 1253 (January 10, 2007) (SR-NYSEArca-2006-75); Securities Exchange Act Release No. 58312 (August 5, 2008), 73 FR 46689 (August 11, 2008) (SR-NYSEArca-2008-63).

<sup>72</sup> Proposed Rule 5.1(b) defines the term “security” to mean any security as defined in Rule 3(a)(10) under the Act and the term “equity security” to include any equity security

subparagraph (a) of proposed Rule 8.400<sup>73</sup> instead of the terms “security,” “securities” and “derivative products” (as used in the rules of NYSE Arca Equities) to refer to the definition of Paired Trust Shares. The Exchange proposes this change because it believes it is more accurate to refer to paired trust shares as securities and equity securities.

- Correction of a typographical error in NYSE Arca Equities Rule 8.400(a), so that proposed Rule 8.400(a) reads “as such terms are used in Rule 5.1(b)” in the last sentence, rather than “as such terms are used in the Rule 5.1(b)” as is currently drafted in NYSE Arca Equities Rule 8.400(a).

*Proposed Rule 8.500 – Trust Units*

The Exchange is proposing Rule 8.500 to provide listing and trading requirements for trust units, so that they may be traded on the Exchange pursuant to UTP.

In addition to the General Definitional Term Changes described above, the Exchange is proposing the following non-substantive change between this proposed rule and NYSE Arca Equities Rule 8.500:<sup>74</sup>

- To be consistent with the Exchange’s definitions proposed in Rule 5.1(b),

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defined as such pursuant to Rule 3a11-1 under the Act.

<sup>73</sup> NYSE Arca Equities Rule 8.400(a) reads as follows:

“(a) Applicability. The provisions in this Rule are applicable only to Paired Trust Shares. In addition, except to the extent inconsistent with this Rule, or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on the Corporation of such securities. Paired Trust Shares are included within the definition of “security,” “securities” and “derivative products” as such terms are used in the Rules of the Corporation.”

<sup>74</sup> See, NYSE Arca Equities Rule 8.500; See, also, Securities Exchange Act Release No. 57059 (December 28, 2007), 73 FR 909 (January 4, 2008) (SR-NYSEArca-2006-76); Securities Exchange Act Release No. 63129 (October 19, 2010), 75 FR 65539 (October 25, 2010) (SR-NYSEArca-2010-91).

the Exchange proposes to substitute the terms “security” and “equity securities” (as such terms are defined in proposed Rule 5.1(b)<sup>75</sup>) in subparagraph (a) of proposed Rule 8.500<sup>76</sup> instead of the terms “security,” “securities” and “derivative products” (as used in the rules of NYSE Arca Equities ) to refer to the definition of Trust Units. The Exchange proposes this change because it believes it is more accurate to refer to trust units as securities and equity securities.

Proposed Rule 8.600 – Managed Fund Shares

The Exchange is proposing Rule 8.600 to provide listing and trading requirements for managed fund shares, so that they may be traded on the Exchange pursuant to UTP.

Other than with respect to the General Definitional Term Changes described above under proposed Rule 5P, there are no differences between this proposed rule and NYSE Arca Equities Rule 8.600.<sup>77</sup>

Proposed Rule 8.700 – Managed Trust Shares

The Exchange is proposing Rule 8.700 to provide listing and trading requirements for managed fund shares, so that they may be traded on the Exchange pursuant to UTP.

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<sup>75</sup> See supra note 72.

<sup>76</sup> NYSE Arca Equities Rule 8.500(a) reads as follows:

“(a) Applicability. The provisions in this Rule are applicable only to Trust Units. In addition, except to the extent inconsistent with this Rule, or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on the Corporation of such securities. Trust Units are included within the definition of “security,” “securities” and “derivative products” as such terms are used in the Rules of the Corporation.”

<sup>77</sup> See, NYSE Arca Equities Rule 8.600; See also, Securities Exchange Act Release No. 57395 (February 28, 2008), 73 FR 11974 (March 5, 2008) (SR-NYSEArca-2008-25); Securities Exchange Act Release No. 57619 (April 4, 2008), 73 FR 19544 (April 10, 2008) (SR-NYSEArca-2008-25).

Other than with respect to the General Definitional Term Changes described above under proposed Rule 5P, there are no differences between this proposed rule and NYSE Arca Equities Rule 8.700.<sup>78</sup>

Proposed Rule 7.18 – Requirements for Halts on Pillar Platform

In conjunction with the implementation of the Pillar trading platform for trading of securities pursuant to UTP, the Exchange proposes new Rule 7.18, under Rule 7P, which would govern trading halts in symbols trading on the Pillar platform.

Since the Exchange is only proposing rules in this filing pertaining to trading pursuant to UTP on the Pillar platform, the Exchange is only proposing Rules 7.18(a) and (d)(1)(B), which pertain to trading halts of securities traded pursuant to UTP and UTP Exchange Traded Products. The Exchange proposes to Reserve Rules 7.18(b)-(c)<sup>79</sup> and Rules 7.18(d)(1)(A) and (C),<sup>80</sup> to maintain the same rule numbers as the NYSE Arca rules with which it conforms.

Other than with respect to the proposed General Definitional Term Changes described above, there are no differences between proposed Rules 7.18(a) and (d)(1)(B) and NYSE Arca Equities Rules 7.18P(a) and (d)(1)(B).

Finally, proposed Rules 7.18(a) and (d)(1)(B) would use the terms and definitions that

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<sup>78</sup> See, NYSE Arca Equities Rule 8.700; See, also, Securities Exchange Act Release No. 60064 (June 8, 2009), 74 FR 28315 (June 15, 2009) (SR-NYSEArca-2009-30); Securities Exchange Act Release No. 59835 (April 28, 2009), 74 FR 21041 (May 6, 2009) (SR-NYSEArca-2009-30).

<sup>79</sup> Because NYSE Arca Equities Rules 7.18P(b)-(c) pertain specifically to specific NYSE Arca order types that the Exchange has not yet proposed, the Exchange proposes such sub-sections of proposed Rule 7.18 on a “reserved” basis, until such later time when the Exchange proposes rules regarding order types to be operative on the Pillar platform.

<sup>80</sup> Since NYSE Arca Equities Rules 7.18(d)(1)(A) and (C) pertain to trading outside of normal business hours, the Exchange proposes such sub-sections of proposed Rule 7.18 on a “reserved” basis. If the Exchange determines to expand its trading hours outside of normal business hours it would propose amendments to Rule 7.18.

were added in the Pillar Framework Filing and proposed as new Rules 1.1(aaa) and (bbb), described above. The Exchange also proposes to define the term “UTP regulatory halt” in Rule 1.1(kk).<sup>81</sup> Proposed Rule 1.1(kk) would define the term “UTP Regulatory Halt” to mean a trade suspension, halt, or pause called by the UTP Listing Market<sup>82</sup> in a UTP Security<sup>83</sup> that requires all market centers to halt trading in that security.<sup>84</sup>

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>85</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>86</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 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 by providing for the trading of securities, including UTP Exchange Traded Products, on the Exchange pursuant to UTP, subject to consistent and reasonable standards. Accordingly, the proposed rule change would contribute to the protection of investors and the public interest because it may provide a better trading environment for investors and, generally, encourage greater competition between markets.

The Exchange believes the proposed rule change also supports the principals of Section

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<sup>81</sup> The Pillar Framework Filing added Rule 1.1(kk) on a “reserved” basis.

<sup>82</sup> See, proposed Rule 1.1(jj).

<sup>83</sup> See, proposed Rule 1.1(ii).

<sup>84</sup> This proposed definition is identical to the definition of “UTP Regulatory Halt” in NYSE Arca Equities Rule 1.1(kk).

<sup>85</sup> 15 U.S.C. 78f(b).

<sup>86</sup> 15 U.S.C. 78f(b)(5).

11A(a)(1)<sup>87</sup> of the Act in that it seeks to ensure the economically efficient execution of securities transactions and fair competition among brokers and dealers and among exchange markets. The proposed rule change also supports the principles of Section 12(f) of the Act, which govern the trading of securities pursuant to a grant of unlisted trading privileges consistent with the maintenance of fair and orderly markets, the protection of investors and the public interest, and the impact of extending the existing markets for such securities.

The Exchange believes that the proposed rule change is consistent with these principles. By providing for the trading of securities on the Exchange on a UTP basis, the Exchange believes its proposal will lead to the addition of liquidity to the broader market for these securities and to increased competition among the existing group of liquidity providers. The Exchange also believes that, by so doing, the proposed rule change would encourage the additional utilization of, and interaction with, the exchange market, and provide market participants with improved price discovery, increased liquidity, more competitive quotes and greater price improvement for securities traded pursuant to UTP.

The Exchange further believes that enhancing liquidity by trading securities on a UTP basis would help raise investors' confidence in the fairness of the market, generally, and their transactions in particular. As such, the general UTP trading rule would foster cooperation and coordination with persons engaged in facilitating securities transactions, enhance the mechanism of a free and open market, and promote fair and orderly markets in securities on the Exchange.

In addition, the trading criteria set forth in proposed Rule 5.1(a) is intended to protect investors and the public interest. The requirements for trading securities pursuant to UTP, as proposed herein in a single, consolidated Rule 5.1(a), are at least as stringent as those of any

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<sup>87</sup> 15 U.S.C 78k-1(a)(1).

other national securities exchange and, specifically, are based on the consolidated rules for trading UTP securities established by other national securities exchanges.<sup>88</sup> Consequently, the proposed rule change is consistent with the protection of investors and the public interest. Additionally, the proposal is designed to prevent fraudulent and manipulative acts and practices, as trading pursuant to UTP is subject to existing Exchange trading rules, together with specific requirements for registered market makers, books and record production, surveillance procedures, suitability and prospectus requirements, and requisite the Exchange approvals, all set forth above.

The proposal is also designed to promote just and equitable principles of trade by way of initial and continued listing standards which, if not maintained, will result in the discontinuation of trading in the affected products. These requirements, together with the applicable Exchange trading rules (which apply to the proposed products), ensure that no investor would have an unfair advantage over another respecting the trading of the subject products. On the contrary, all investors will have the same access to, and use of, information concerning the specific products and trading in the specific products, all to the benefit of public customers and the marketplace as a whole.

The proposal is intended to ensure that investors receive up-to-date information on the value of certain underlying securities and indices in the products in which they invest, and protect investors and the public interest, enabling investors to: (i) respond quickly to market changes through intra-day trading opportunities; (ii) engage in hedging strategies; and (iii) reduce

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<sup>88</sup> See NSX Rule 15.9 and Securities Exchange Act Release No. 57448 (March 6, 2008), 73 FR 13597 (March 13, 2008) (SR-NSX-2008-05); Phlx Rule 803(o) and Securities Exchange Act Release No. 57806 (May 9, 2008), 73 FR 28541 (May 16, 2008) (SR-Phlx-2008-34); ISE Rule 2101 and Securities Exchange Act Release No. 57387 (February 27, 2008), 73 FR 11965 (March 5, 2008) (SR-ISE-2007-99).

transaction costs for trading a group or index of securities.

Furthermore, the proposal is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system by adopting listing standards that will lead ultimately to the trading, whether by listing or pursuant to UTP, of the proposed new products on the Exchange, just as they are currently traded on other exchanges. The proposed changes do nothing more than match Exchange rules with what is currently available on other exchanges. The Exchange believes that by conforming its rules and allowing listing opportunities on the Exchange that are already allowed by rule on another market, the proposal would offer another venue for listing and trading Exchange Traded Products and thereby promote broader competition among exchanges. The Exchange believes that individuals and entities permitted to make markets on the Exchange in the proposed new products should enhance competition within the mechanism of a free and open market and a national market system, and customers and other investors in the national market system should benefit from more depth and liquidity in the market for the proposed new products.

The proposed change is not designed to address any competitive issue, but rather to adopt new rules that are word-for-word identical to the rules of NYSE Arca (other than with respects[sic] to certain non-substantive and technical amendments described above), to support the Exchange's new Pillar trading platform. As discussed in detail above, with this rule filing, the Exchange is not proposing to change its core functionality, but rather to adopt a rule numbering framework and rules based on the rules of NYSE Arca. The Exchange believes that the proposed rule change would promote consistent use of terminology to support the Pillar trading platform on both the Exchange and its affiliate, NYSE Arca, thus making the Exchange's rules easier to navigate.

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 Act. To the contrary, the current variances between the Exchange's listing rules and the listing rules of other exchanges limit competition in that there are certain products that the Exchange cannot trade, whether by listing or pursuant to UTP, while other exchanges can list and trade such products. Thus, approval of the proposed rule change will promote competition because it will allow the Exchange to compete with other national securities exchanges for the trading of securities pursuant to UTP.

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 45 days of the date of publication of this notice in the Federal Register or up to 90 days (i) as the Commission may designate 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 or disapprove the 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2016-44 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSE-2016-44. 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 website (<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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the 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-NYSE-2016-44 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>89</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>89</sup> 17 CFR 200.30-3(a)(12).