

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80500; File No. SR-NYSEMKT-2016-103)

April 21, 2017

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Amendment No. 1 to a Proposed Rule Change Allowing the Exchange to Trade, Pursuant to Unlisted Trading Privileges, Any NMS Stock Listed On Another National Securities Exchange; Establishing Rules for the Trading Pursuant to UTP of Exchange-Traded Products; and Adopting New Equity Trading Rules Relating to Trading Halts of Securities Traded Pursuant to UTP on the Pillar Platform

On June 30, 2016, NYSE MKT LLC (“Exchange” or “NYSE MKT”) 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 (1) allow the Exchange to trade pursuant to unlisted trading privileges (“UTP”) any NMS Stock³ 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 for securities traded pursuant to UTP on the Exchange’s new trading platform, Pillar. The proposed rule change was published for comment in the Federal Register on December 1, 2016.⁴

On January 4, 2017, pursuant to Section 19(b)(2) of the Act,⁵ the Commission designated a longer 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The term “NMS Stock” is defined in Rule 600 of Regulation NMS. See 17 CFR 242.600(b)(47).

⁴ See Securities Exchange Act Release No. 79400 (Nov. 25, 2016), 81 FR 86750 (Dec. 1, 2016).

⁵ 15 U.S.C. 78s(b)(2).

change.⁶ On February 24, 2017, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.⁷ The Commission has received no comments on the proposed rule change.

On March 28, 2017, the Exchange filed Amendment No. 1 to the proposed rule change, as described in Items I and II below, which Items have been prepared by the Exchange.⁸ The Commission is publishing this notice to solicit comments on Amendment No. 1 to 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 listed on another national securities exchange; (2) establish rules for the trading pursuant to UTP of 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. This Amendment No. 1 supersedes the original filing in its entirety. This Amendment No. 1 also amends the proposed rules to conform to the rules of NYSE Arca, Inc. ("NYSE Arca"), as they may have been amended since the date of the original filing. The

⁶ See Securities Exchange Act Release No. 79738 (Jan. 4, 2017), 82 FR 3068 (Jan. 10, 2017).

⁷ See Securities Exchange Act Release No. 80097 (Feb. 24, 2017), 82 FR 12251 (Mar. 1, 2017). Specifically, the Commission instituted proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade," and "to protect investors and the public interest." See *id.* at 12252.

⁸ The full text of Amendment No. 1, including Exhibits 4 and 5, is available at <https://www.sec.gov/comments/sr-nysemkt-2016-103/nysemkt2016103-1672987-149219.pdf>.

proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the 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 A and Tape C symbols, on a UTP basis, on its new trading platform, Pillar.⁹

In addition, the Exchange is proposing rules for the trading on Pillar pursuant to UTP of the following types of Exchange Traded Products:¹⁰

⁹ 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 and New York Stock Exchange LLC ("NYSE LLC"). See Trader Update dated January 29, 2015, available here: http://www1.nyse.com/pdfs/Pillar_Trader_Update_Jan_2015.pdf. In February 2016, NYSE Arca Equities was the first market to begin migration to the Pillar platform. In March of 2016, NYSE Group, Inc. announced the completion of a "key phase" of the project and, in May 2016, NYSE Group, Inc. completed the rollout of NYSE Pillar matching engines on NYSE Arca. The next phase of the NYSE Pillar migration began in November 2016 with certification testing for the new gateways and protocols. See Content To Live: [HTTPS://WWW.NYSE.COM/PILLAR](https://www.nyse.com/pillar).

¹⁰ 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 1.1E(bbb). This proposed

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

definition is identical to the definition of “Derivatives Securities Product” in NYSE Arca Equities Rule 1.1(bbb).

- Managed Fund Shares; and
- Managed Trust Securities.

The Exchange's proposed rules for these products are substantially identical (other than with respects 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.¹¹

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"),¹² (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,¹³ 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 to certain non-substantive and technical changes) for adoption by its new trading platform for equity products and exchange traded funds – AEMI.¹⁴

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

¹¹ See NYSE Arca Equities Rules 5 (Listings) and 8 (Trading of Certain Equities Derivatives).

¹² See, Securities Exchange Act Release No. 63097 (October 13, 2010), 75 FR 64767 (October 20, 2010) (SR-BYX-2010-002).

¹³ See, Securities Exchange Act Release No. 69928 (July 3, 2013), 78 FR 41489 (July 10, 2013) (SR-NASDAQ-2013-094).

¹⁴ 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).

pursuant to UTP.¹⁵ Therefore, the Exchange is only proposing ETP rules in this rule filing that would apply to the Pillar platform and trading pursuant to UTP. Since the Exchange does not plan to trade ETPs on the Pillar platform that would be listed under these proposed rules, 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 MKT Company Guide¹⁶ or in its other rules.

In accordance with the rule numbering framework adopted by the Exchange in the Pillar Framework Filing,¹⁷ 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 7E relating to equities trading.¹⁸ The Exchange now proposes Rule 7.18E under Rule 7E relating to trading halts of securities traded pursuant to UTP on the Pillar platform. The Exchange's proposed Rule 7.18E is substantially identical (other than with respects to certain

¹⁵ The Exchange currently lists five ETPs on its current trading platform. These ETPs will continue to be listed and traded pursuant to the NYSE MKT Company Guide and the other rules of the Exchange that do not apply to the Pillar platform.

¹⁶ NYSE MKT Company Guide, <http://wallstreet.cch.com/MKT/CompanyGuide/>.

¹⁷ See, SR-NYSEMKT-2016-97 Initial Filing (October 25, 2016) ("Pillar Framework Filing"). The Exchange is using the same rule numbering framework as the NYSE Arca Equities rules and would consist of proposed Rules 1E – 13E. Rules 1E -13E would be operative for securities that are trading on the Pillar trading platform.

¹⁸ The Pillar Framework Filing added Rules 7.5E and 7.6E to establish the trading units and trading differentials for trading on the Pillar platform. The Exchange also added Rule 7.12E, related to Trading Halts Due to Extraordinary Market Volatility in the Pillar Framework Filing. 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-Equities (which defines the term "Exchange BBO") would not be applicable to trading on the Pillar trading platform. In addition, with the exception of Rules 7.5E, 7.6E and 7.12E, the Exchange added Rules 7.1E – Rule 7.44E on a "Reserved" basis. Id.

non-substantive and technical amendments described below) as NYSE Arca Equities Rule 7.18.¹⁹

Proposal to Trade Securities Pursuant to UTP

The Exchange is proposing new Rule 5.1E(a) to establish rules regarding the extension of UTP securities to the Pillar platform, which are listed on other national securities exchanges. As proposed, the first sentence of new Rule 5.1E(a) would allow the Exchange to trade securities eligible for UTP under Section 12(f) of the Exchange Act.²⁰ This proposed text is identical to Rules 14.1 of both BYX and EDGA Exchange, Inc. (“EDGA”) and substantially similar to NYSE Arca Equities Rule 5.1(a).

Proposed Rule 5.1E(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.²¹ In addition, proposed Rule 5.1E(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.²² Accordingly, the Exchange would not

¹⁹ See, NYSE Arca Equities Rule 7.18. 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 (October 20, 2015), 80 FR 65274 (October 26, 2015) (SR-NYSEArca-2015-58).

²⁰ Section 12(f) of the Exchange Act. 15 U.S.C. 78l(f).

²¹ 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).

²² See supra note 17.

trade UTP securities on the Pillar platform until its trading rules for the Pillar platform are effective.

Finally, proposed Rule 5.1E(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)²³ under the Act. Therefore, the provisions of proposed Rules 5E and 8E 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 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.²⁴

UTP of Exchange Traded Products

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

²³ 15 U.S.C. 78s(b)(2).

²⁴ 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).

Under proposed Rule 5.1E(a)(2)(A), the Exchange would file a Form 19b-4(e) with the Commission with respect to each ETP²⁵ the Exchange trades pursuant to UTP within five days after commencement of trading.

In addition, proposed Rule 5.1E(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-Equities and 2111-Equities,²⁶ and (c) information about the dissemination of value of the underlying assets or indices.

Under proposed Rule 5.1E(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

²⁵ 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.

²⁶ See, Rule 2090-Equities (the Exchange's Know Your Customer Rule) and Rule 2111-Equities (the Exchange's Suitability Rule). See, also, Securities Exchange Act Release No. 78106 (June 20, 2016), 81 FR 41364 (June 24, 2016) (SR-NYSEMKT-2016-59).

the next business day, the Exchange would not commence trading of the product that day. If an 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 5.1E(a)(2)(C) and (E) would establish the following requirements for ETP Holders that have customers that trade UTP Exchange Traded Products:

- Prospectus Delivery Requirements. Proposed Rule 5.1E(a)(2)(C)(i) would remind ETP Holders 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. ETP Holders would also be required to provide a prospectus to a customer requesting a prospectus.²⁷

- Written Description of Terms and Conditions. Proposed Rule 5.1E(a)(2)(C)(ii) would require ETP Holders 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 5.1E(a)(E) would establish certain restrictions for any ETP Holder 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 an ETP Holder 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 ETP Holder acting as registered market maker may have or over which it may exercise investment discretion.²⁸ If an account in which an ETP Holder acting as a

²⁷ Proposed Rule 5.1E(a)(2)(C)(iii).

²⁸ 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

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, an ETP Holder 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 1.1E(bbb). Proposed Rule 1.1E(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.²⁹ 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.

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 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.

²⁹ 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 rules for the trading pursuant to UTP of the ETPs that 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).³⁰ 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 5.1E(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 ETP Holders, the Exchange proposes to substitute this term where "shall" is used in the rules of NYSE Arca Equities;

³⁰ The Exchange is proposing to Reserve paragraphs (b)(3), (b)(7), (b)(8), (b)(10), (b)(17) and (b)(19) of proposed Rule 5.1E(b), because the terms used in the parallel provisions of the NYSE Arca Equities rules would not be used in the rules for the trading pursuant to UTP of the ETPs that the Exchange is proposing in this filing.

- The Exchange proposes to use the term “ETP Holder”³¹ instead of “member organization,” as defined in Rule 2-Equities, because member organizations would be required to hold an Equity Trading Permit issued by the Exchange to effect transactions on the Exchange’s Pillar platform;
- The Exchange proposes to use the term “Exchange”³² instead of “Corporation, “NYSE Arca Marketplace,” or “NYSE Arca Parent;”
- Because the Exchange’s hours for business are described in Rule 51-Equities 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 on the Pillar platform are described in Rule 7.12E, the Exchange is proposing to refer to Rule 7.12E in its proposed

³¹ The Exchange plans to file additional proposed rule changes under Rule 19b-4 of the Act to implement the Pillar platform on the Exchange. These additional proposed rule changes would define the terms “ETP Holder” and “Market Maker” as they would be used on the Exchange’s Pillar platform and specify the requirements for obtaining an Equity Trading Permit.

³² Under Rule 1E, the term “the Exchange,” when used with reference to the administration of any rule, means the NYSE MKT LLC or the officer, employee, person, entity or committee to whom appropriate authority to administer such rule has been delegated by the Exchange.

rules wherever NYSE Arca Equities Rule 7.12³³ 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-Equities, the Exchange is proposing to refer to Rule 80C-Equities in its proposed rules wherever NYSE Arca Equities Rule 7.11³⁴ is referenced in the rules of NYSE Arca Equities proposed in this filing;
- Because NYSE Arca Equities Rule 7.18³⁵ establishes the requirements for trading halts in securities traded on the Pillar trading platform, and the Exchange is proposing new Rule 7.18E in this filing, based on NYSE Arca Equities Rule 7.18, the Exchange is proposing to refer to Rule 7.18E in its proposed rules wherever NYSE Arca Equities Rule 7.34 [sic] is referenced in the rules of NYSE Arca Equities proposed in this filing; and
- Because the Exchange's rules regarding the production of books and records are described in Rule 440-Equities, the Exchange is proposing to refer to Rule 440-Equities in its proposed rules wherever NYSE Arca

³³ Exchange Rule 7.12E is substantially identical to NYSE Arca Equities Rule 7.12, which pertains to Trading Halts Due to Extraordinary Market Volatility.

³⁴ Exchange Rule 80C-Equities is substantially identical to NYSE Arca Equities Rule 7.11, which pertains to the Limit Up-Limit Down Plan and Trading Pauses In Individual Securities Due to Extraordinary Market Volatility.

³⁵ See supra note 19.

Equities Rule 4.4³⁶ is referenced in the rules of NYSE Arca Equities proposed in this filing.

Rules for the Trading Pursuant to UTP of ETPs

The Exchange would have to file a Form 19b-4(e) with the Commission to trade these ETPs pursuant to UTP. 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.³⁷

Furthermore, the Exchange proposes to include additional continued listing standards in the proposed rules for the trading pursuant to UTP, as well as clarify the procedures it will undertake when an ETP is noncompliant with applicable rules. These proposed rules are being made in concert with discussions with the SEC. Staff (“Staff”) of the SEC’s Division of Trading and Markets (“T&M”) requested that the Exchange adopt certain additional continued listing standards for trading ETPs pursuant to UTP.

As a result, the proposed rules for the trading pursuant to UTP reflect the guidance provided by T&M Staff to clarify that most initial listing standards, as well as certain representations included in Exchange rule filings under SEC Rule 19b-4 to trade ETPs pursuant to UTP (“Exchange Rule Filings”), are also considered continued listing standards. The Exchange Rule Filing representations that will also be required to be maintained on a continuous basis include (a) the description of the fund and (b) the fund’s investment restrictions.

³⁶ In addition to the existing obligations under the rules of NYSE Arca Equities regarding the production of books and records, NYSE Arca Equities Rule 4.4 provides restrictions on ETP Holder activities pertaining to books and records.

³⁷ Each proposed NYSE Rule corresponds to the same rule number as the NYSE Arca Equities rules with which it conforms.

The proposed rules require that ETPs traded pursuant to UTP on the Exchange without an Exchange Rule Filing must maintain the initial index or reference asset criteria on a continued basis. For example, in the case of a domestic equity index, these criteria generally include: (a) stocks with 90% of the weight of the index must have a minimum market value of at least \$75 million; (b) stocks with 70% of the weight of the index must have a minimum monthly trading volume of at least 250,000 shares; (c) the most heavily weighted component cannot exceed 30% of the weight of the index, and the five most heavily weighted stocks cannot exceed 65%; (d) there must be at least 13 stocks in the index; and (e) all securities in the index must be listed in the U.S. There are similar criteria for international indexes, fixed-income indexes and indexes with a combination of components.

If an Exchange Rule Filing is made to trade a specific ETP pursuant to UTP, the proposed rules require that the issuer of the security comply on a continuing basis with any statements or representations contained in the applicable rule proposal, including (a) the description of the portfolio and (b) limitations on portfolio holdings or reference assets. The ETP rules will also be modified to require that issuers of securities traded pursuant to UTP under proposed Rules 5E and 8E must notify the Exchange regarding instances of non-compliance. In addition, ETPs traded pursuant to UTP will be subject to certain delisting procedures in proposed Rule 5.5E(m), and the other Exchange rules will make this explicit.

Proposed Rule 5E – Securities Traded

The Exchange proposes to add introductory language under the main heading of proposed Rule 5E, which states that the provisions of proposed Rule 5E would apply only to the trading pursuant to UTP of ETPs, and would not apply to the listing of ETPs on the Exchange. The Exchange is proposing this language to clarify that the rules incorporated in proposed Rule 5E

should not be interpreted to be listing requirements of the Exchange, but rather, requirements that pertain solely to the trading of ETPs pursuant to UTP on the Pillar platform.

The Exchange proposes to add Rules 5.2E(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 rules for the trading pursuant to UTP that are contained in proposed Rule 5.2E(j)(2);
- Investment Company Units that meet the rules for the trading pursuant to UTP that are contained in proposed Rule 5.2E(j)(3);
- Index-Linked Exchangeable Notes that meet the rules for the trading pursuant to UTP that are contained in proposed Rule 5.2E(j)(4);
- Equity Gold Shares that meet the rules for the trading pursuant to UTP that are contained in proposed Rule 5.2E(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 rules for the trading pursuant to UTP that are contained in proposed Rule 5.2E(j)(6); and
- Trust Certificates that meet the rules for the trading pursuant to UTP that are contained in proposed Rule 5.2E(j)(7).

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 5.2E(a)-(i)³⁸ and (j)(1),³⁹ to maintain the same rule numbers as the NYSE Arca rules with which it conforms.

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

The Exchange is proposing Rule 5.2E(j)(2) to provide rules for the trading pursuant to UTP of 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).⁴⁰

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

The Exchange is proposing Rule 5.2E(j)(3) to provide rules for the trading pursuant to UTP of investment company 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, there are no differences between this proposed rule and NYSE Arca Equities Rule 5.2(j)(3).⁴¹

³⁸ 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 MKT Company Guide 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 5.2E(j)(3) (Investment Company Units) or proposed Rule 8.100E (Portfolio Depository Receipts).

³⁹ 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).

⁴⁰ 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).

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

The Exchange is proposing Rule 5.2E(j)(4) to provide rules for the trading pursuant to UTP of 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):⁴²

- 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

⁴¹ 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).

⁴² 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).

subparagraphs (a) and (c) of proposed Rule 5.2E(j)(4) in establishing the criteria that an issuer and issue must satisfy.⁴³

- 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). Because the Exchange's rules for listing of index option contracts are described in Rule 901C, the Exchange is proposing to refer to Rule 901C wherever NYSE Arca Options Rule 5.13⁴⁴ is referenced in paragraph (d) of proposed Rule 5.2E(j)(4). The Exchange would apply the criteria set forth in Rule 901C in determining whether an index underlying an index-linked exchangeable note satisfies the requirements of Rule 5.2E(j)(4)(d).
- Correction of a typographical error in NYSE Arca Equities Rule 5.2(j)(4)(f)(iii), so that proposed Rule 5.2E(j)(4)(f)(iii) reads "further

⁴³ 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.

⁴⁴ Commentary .03 to Exchange Rule 901C is substantially identical to NYSE Arca Options Rule 5.13, and 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.

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).

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

The Exchange is proposing Rule 5.2E(j)(5) to provide rules for the trading pursuant to UTP of 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).⁴⁵

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

The Exchange is proposing Rule 5.2E(j)(6) to provide rules for the trading pursuant to UTP of 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):⁴⁶

- 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

⁴⁵ 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).

⁴⁶ 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).

Rule 5.1(j)(1), the Exchange proposes to reference NYSE Arca Equities Rule 5.1(j)(1) in proposed Rule 5.2E(j)(6)(A)(a) establishing the criteria that an issue and issuer must satisfy.⁴⁷

- The listing standards for Equity Index-Linked Securities in NYSE Arca Equities Rule 5.2(j)(6) reference NYSE Arca Options Rule 5.3 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's rules for establishing the criteria for underlying securities of put and call options contracts is described in Rule 915, the Exchange proposes to reference to Rule 915⁴⁸ wherever NYSE Arca Options Rule 5.3 is referenced in paragraph (B)(I)(1)(b)(2)(iv) of proposed Rule 5.2E(j)(6), to establish the initial listing criteria that an index must meet to trade pursuant to UTP.

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

The Exchange is proposing Rule 5.2E(j)(7) to provide rules for the trading pursuant to UTP of 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):⁴⁹

⁴⁷ See supra note 43.

⁴⁸ Rule 915 is substantially identical to NYSE Arca Options Rule 5.3, and establishes the criteria for underlying securities of put and call option contracts listed on the exchange.

⁴⁹ 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 9.2.⁵⁰ 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 an ETP Holder 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 8E – Trading of Certain Exchange Traded Products

The Exchange proposes to add introductory language under the main heading of proposed Rule 8E, which states that the provisions of proposed Rule 8E would apply only to the trading pursuant to UTP of ETPs, and would not apply to the listing of ETPs on the Exchange. The Exchange is proposing this language to clarify that the rules incorporated in proposed Rule 8E should not be interpreted to be listing requirements of the Exchange, but rather, requirements that pertain solely to the trading of ETPs pursuant to UTP on the Pillar platform.

The Exchange proposes to add Rule 8E, 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 Depository Receipts, Trust Issued Receipts, Commodity-Based Trust Shares, Currency Trust

⁵⁰ 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 ETP Holder and contains an Index Warrant, then the ETP Holder must ensure that the ETP Holder's account is approved in accordance with Rule 9.2 in order to exercise such rights.

Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, Paired Trust Shares, Trust Units, Managed Fund Shares, and Managed Trust Securities.⁵¹

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

The text of proposed Rule 8E 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 5E above would also apply to proposed Rule 8E.

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

The Exchange is proposing Rules 8.1E-8.13E to provide rules for the trading pursuant to UTP (including sales-practice rules such as those relating to suitability and supervision of accounts) of currency and index warrants, so that they may be traded on the Exchange pursuant to UTP.⁵²

In addition to the General Definitional Term Changes described above under proposed Rule 5E, 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):

⁵¹ 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).

⁵² 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 8.1E – 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 8.2E – 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.

Proposed Rule 8.3E – 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 NYSE Arca Equities Rule 5.2(c) in subparagraph (a) of proposed Rule 8.3E.

Proposed Rule 8.4E – Account Approval

- The account approval rules of NYSE Arca Equities Rule 8.4 reference NYSE Arca Equities Rule 9.18(b) in describing the criteria that must be met for opening up a customer account for options trading. Because the Exchange's account approval rules are described in Rule 921,⁵³ the Exchange would cross-reference to Rule 921 wherever NYSE Arca Rule 9.18(b) is referenced in proposed Rule 8.4E.

⁵³ Rule 921 is substantially similar to NYSE Arca Equities Rule 9.18(b), and establishes criteria that must be met to open up a customer account for options trading.

Proposed Rule 8.5E – Suitability

- The account suitability rules of NYSE Arca Equities Rule 8.5 reference NYSE Arca Equities Rule 9.18(c) in describing rules that apply to recommendations made in stock index, currency index and currency warrants. Because the Exchange’s account suitability rules are described in Rule 923,⁵⁴ the Exchange would cross-reference to Rule 923 wherever NYSE Arca Rule 9.18(c) is referenced in proposed Rule 8.5E.

Proposed Rule 8.6E – Discretionary Accounts

- The rules of NYSE Arca Equities Rule 8.6 reference the fact that NYSE Arca Equities Rule 9.6(a) 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) will apply to such discretionary accounts instead. Because the Exchange’s discretionary account rules for equity trading are described in Rule 408-Equities,⁵⁵ the Exchange would cross-reference to Rule 408-Equities wherever NYSE Arca Equities Rule 9.6(a) is referenced in proposed Rule 8.6E. Because the Exchange’s discretionary account rules for options trading are described in Rule 924,⁵⁶ the Exchange would cross-reference

⁵⁴ Rule 923 is substantially similar to NYSE Arca Equities Rule 9.18(c), and establishes suitability rules that pertain to recommendations in stock index, currency index and currency warrants.

⁵⁵ Rule 408-Equities is substantially similar to NYSE Arca Equities Rule 9.6(a), and pertains to the rules of the Exchange with regard to discretionary power in customer accounts for equity trading.

⁵⁶ Rule 924 is substantially similar to NYSE Arca Equities Rule 9.18(e), and establishes rules pertaining to discretion as to customer accounts for options trading.

to Rule 924 wherever NYSE Arca Equities Rule 9.18(e) is referenced in proposed Rule 8.6E.

Proposed Rule 8.7E – Supervision of Accounts

- The account supervision rules of NYSE Arca Equities Rule 8.7 reference NYSE Arca Equities Rule 9.18(d) in describing rules that apply to the supervision of customer accounts in which transactions in stock index, currency index or currency warrants are effected. Because the Exchange's rules that apply to the supervision of customer accounts of such nature are described in Rule 922,⁵⁷ the Exchange would cross-reference to Rule 922 wherever NYSE Arca Equities Rule 9.18(d) is referenced in proposed Rule 8.7E.

Proposed Rule 8.8E – Customer Complaints

- The customer complaint rules of NYSE Arca Equities Rule 8.8 reference NYSE Arca Equities Rule 9.18(l) in describing rules that apply to customer complaints received regarding stock index, currency index or currency warrants. Because the Exchange's rules that govern doing a public business in options are described in Rule 932,⁵⁸ the Exchange would cross-reference to Rule 932 wherever NYSE Arca Equities Rule 9.18(l) are referenced in proposed Rule 8.8E.

⁵⁷ Rule 922 is substantially similar to NYSE Arca Equities Rule 9.18(d), and 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.

⁵⁸ Rule 932 is substantially similar to NYSE Arca Equities Rule 9.18(l), and establishes rules that apply to customer complaints received regarding stock index, currency index or currency warrants.

Proposed Rule 8.9E – 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. Because the Exchange’s rules that govern advertisements, market letters and sales literature relating to options are described in Rule 991,⁵⁹ the Exchange would cross-reference to Rule 991 wherever NYSE Arca Equities Rule 9.28 is referenced in proposed Rule 8.9E.

Proposed Rule 8.10E – 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.

Proposed Rule 8.11E – 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 8.12E – 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.

⁵⁹ Rule 991 is substantially similar to NYSE Arca Equities Rule 9.28, and 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.

Proposed Rule 8.13E – Reporting of Warrant Positions

- The Exchange proposes to correct a typographical error in NYSE Arca Equities Rule 8.13. Proposed Rule 8.13E would read “whenever a report shall be required to be filed with respect to an account pursuant to this Rule, the ETP Holder 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 ETP Holder 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 8.100E – Portfolio Depositary Receipts

The Exchange is proposing Rule 8.100E to provide rules for the trading pursuant to UTP of 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 5E, there are no differences between this proposed rule and NYSE Arca Equities Rule 8.100.⁶⁰

Proposed Rule 8.200E – Trust Issued Receipts

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

⁶⁰ 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).

Other than with respect to the General Definitional Term Changes described above under proposed Rule 5E, there are no differences between this proposed rule and NYSE Arca Equities Rule 8.200.⁶¹

Proposed Rule 8.201E – Commodity-Based Trust Shares

The Exchange is proposing Rule 8.201E to provide rules for the trading pursuant to UTP of 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 5E, there are no differences between this proposed rule and NYSE Arca Equities Rule 8.201.⁶²

Proposed Rule 8.202E – Currency Trust Shares

The Exchange is proposing Rule 8.202E to provide rules for the trading pursuant to UTP of 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 5E, there are no differences between this proposed rule and NYSE Arca Equities Rule 8.202.⁶³

⁶¹ 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).

⁶² 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).

⁶³ 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).

Proposed Rule 8.203E – Commodity Index Trust Shares

The Exchange is proposing Rule 8.203E to provide rules for the trading pursuant to UTP of 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 8.203:⁶⁴

- Correction of a typographical error in NYSE Arca Equities Rule 8.203(d), so that proposed Rule 8.203E(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 8.204E – Commodity Futures Trust Shares

The Exchange is proposing Rule 8.204E to provide rules for the trading pursuant to UTP of 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 5E, there are no differences between this proposed rule and NYSE Arca Equities Rule 8.204.⁶⁵

Proposed Rule 8.300E – Partnership Units

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

⁶⁴ 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).

⁶⁵ 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).

Other than with respect to the General Definitional Term Changes described above under proposed Rule 5E, there are no differences between this proposed rule and NYSE Arca Equities Rule 8.300.⁶⁶

Proposed Rule 8.400E – Paired Trust Shares

The Exchange is proposing Rule 8.400E to provide rules for the trading pursuant to UTP of 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 8.400:⁶⁷

- To be consistent with the Exchange’s definitions proposed in Rule 5.1E(b), the Exchange proposes to substitute the terms “security” and “equity securities” (as such terms are defined in proposed Rule 5.1E(b)⁶⁸) in subparagraph (a) of proposed Rule 8.400E⁶⁹ instead of the terms “security,” “securities” and “derivative products” (as used in the rules of

⁶⁶ 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).

⁶⁷ 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).

⁶⁸ Proposed Rule 5.1E(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 defined as such pursuant to Rule 3a11-1 under the Act.

⁶⁹ 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.”

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.

Proposed Rule 8.500E – Trust Units

The Exchange is proposing Rule 8.500E to provide rules for the trading pursuant to UTP of 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 8.500:⁷⁰

- To be consistent with the Exchange’s definitions proposed in Rule 5.1E(b), the Exchange proposes to substitute the terms “security” and “equity securities” (as such terms are defined in proposed Rule 5.1E(b)⁷¹) in subparagraph (a) of proposed Rule 8.500E⁷² 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

⁷⁰ 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).

⁷¹ See supra note 74 [sic].

⁷² 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.”

Exchange proposes this change because it believes it is more accurate to refer to trust units as securities and equity securities.

Proposed Rule 8.600E – Managed Fund Shares

The Exchange is proposing Rule 8.600E to provide rules for the trading pursuant to UTP of 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 5E, there are no differences between this proposed rule and NYSE Arca Equities Rule 8.600.⁷³

Proposed Rule 8.700E – Managed Trust Securities

The Exchange is proposing Rule 8.700E to provide rules for the trading pursuant to UTP of managed trust securities, 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 5E, there are no differences between this proposed rule and NYSE Arca Equities Rule 8.700.⁷⁴

Proposed Rule 7.18E – 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 7.18E, under Rule 7E, which would govern trading halts in symbols trading on the Pillar platform.

⁷³ 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).

⁷⁴ 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).

Other than with respect to the proposed General Definitional Term Changes described above, there are no differences between proposed Rules 7.18E(a) – (d)(1) and NYSE Arca Equities Rules 7.18(a) – (d)(1). The Exchange does not propose rules based on NYSE Arca Equities Rule 7.18(d)(2) because the Exchange would not be a listing venue under Rules 5E and 8E.

Finally, proposed Rules 7.18E would use the terms and definitions that were added in the Pillar Framework Filing and proposed as new Rules 1.1E(aaa) and (bbb), described above. The Exchange also proposes to define the term “UTP regulatory halt” in Rule 1.1E(kk).⁷⁵ Proposed Rule 1.1E(kk) would define the term “UTP Regulatory Halt” to mean a trade suspension, halt, or pause called by the UTP Listing Market⁷⁶ in a UTP Security⁷⁷ that requires all market centers to halt trading in that security.⁷⁸

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁸⁰ 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

⁷⁵ The Pillar Framework Filing added Rule 1.1E(kk) on a “reserved” basis.

⁷⁶ See, proposed Rule 1.1E(jj).

⁷⁷ See, proposed Rule 1.1E(ii).

⁷⁸ This proposed definition is identical to the definition of “UTP Regulatory Halt” in NYSE Arca Equities Rule 1.1(kk).

⁷⁹ 15 U.S.C. 78f(b).

⁸⁰ 15 U.S.C. 78f(b)(5).

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 11A(a)(1)⁸¹ 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

⁸¹ 15 U.S.C 78k-1(a)(1).

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 5.1E(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 5.1E(a), are at least as stringent as those of any other national securities exchange and, specifically, are based on the consolidated rules for trading UTP securities established by other national securities exchanges.⁸² 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 proposed rule changes accomplish these objectives by enhancing Exchange rules by clarifying that most initial listing standards, as well as certain representations included in Exchange Rule Filings to list an ETP, are considered continued listing standards. Additionally, the ETP rules will also require that issuers of securities listed under proposed Rules 5E and 8E must notify the Exchange regarding instances of non-compliance and to clarify that deficiencies will be subject to the delisting process in proposed Rule 5.5E(m). The Exchange believes that

⁸² 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).

these proposed rules will enhance the Exchange's rules, thereby serving to improve the national market system and protect investors and the public interest.

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 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 rules that will lead ultimately to the trading 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 trading opportunities on the Exchange that are already allowed by rule on another market, the proposal would offer another venue for 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 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 rules for the trading pursuant to UTP and the rules of other exchanges limit competition in that there are certain products that the Exchange cannot trade pursuant to UTP, while other exchanges can 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.

The Exchange believes that proposed Rules 5E and 8E and the related notification requirements will have no impact on competition. Furthermore, since T&M Staff has provided the same guidance regarding ETP continued listing requirements to all exchanges, the Exchange believes that there will be no effect on competition.

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. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Section 6(b)(5) of the Act, the other provisions of the Act, and the rules and regulations thereunder. In particular, the Commission invites the written views of interested persons concerning the sufficiency of the Exchange's statements in support of Amendment No. 1 to the proposed rule change, which are set forth above, and the specific requests for comment set forth in the Order Instituting Proceedings.⁸³ 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-NYSEMKT-2016-103 in the subject line.

Paper Comments:

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

⁸³ See Order Instituting Proceedings, supra note 7, at 12252.

All submissions should refer to File Number SR-NYSEMKT-2016-103. This file number should be included in 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEMKT-2016-103 and should be submitted on or before [insert date 15 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸⁴

Eduardo A. Aleman
Assistant Secretary

⁸⁴ 17 CFR 200.30-3(a)(12).