

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88058; File No. SR-NYSE-2020-04)

January 28, 2020

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 104(f)(5) to Extend the Operative date of the requirements of Rules 104(f)(2) and (3) to Exchange Traded Products

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on January 17, 2020, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been 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 amend Rule 104(f)(5) to extend the operative date of the requirements of Rules 104(f)(2) and (3) to Exchange Traded Products (“ETPs”) to no later than eighteen weeks after ETPs listed on the Exchange pursuant to Rules 5P and 8P begin trading. The 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 proposes to amend Rule 104(f)(5) to extend the operative date of the requirements of Rules 104(f)(2) and (3) to ETPs to no later than eighteen weeks after ETPs listed on the Exchange pursuant to Rules 5P and 8P begin trading.

Rule 104(f) imposes an affirmative obligation on Designated Market Makers (“DMM”) to maintain, insofar as reasonably practicable, a fair and orderly market on the Exchange in assigned securities, including maintaining price continuity with reasonable depth and trading for the DMM’s own account when lack of price continuity, lack of depth, or disparity between supply and demand exists or is reasonably to be anticipated. The Exchange supplies DMMs with suggested Depth Guidelines for each security in which a DMM is registered, and DMMs are expected to quote and trade with reference to those Depth Guidelines.⁴

⁴ See Rule 104(f)(3).

The Exchange amended Rule 104 to specify DMM requirements for ETPs listed on the Exchange pursuant to Rules 5P and 8P.⁵ In that filing, the Exchange added subsection (5) to Rule 104(f) providing that, for those ETPs in which they are registered, DMM units are responsible for the affirmative obligation of maintaining a fair and orderly market, including maintaining price continuity with reasonable depth for their registered ETPs in accordance with Depth Guidelines published by the Exchange. To provide the Exchange time to collect trading data adequate to calculate appropriate Depth Guidelines for listed ETPs, the Exchange proposed that Rule 104(f)(2) and (3) would not be operative until eighteen weeks after the approval of the proposed rule change by the Commission.⁶ The Commission approved the rule filing on September 23, 2019. Rules 104(f)(2) and (3) would accordingly be operative for ETPs on January 27, 2020.

To date, no ETPs have listed on the Exchange. In order to provide the Exchange with adequate time to calculate the appropriate Depth Guidelines for ETPs based on actual trading data, the Exchange proposes to specify in Rule 104(f)(5) that the outside date for the requirements Rule 104(f)(2) and (3) to be operative with respect to ETPs would be no later than eighteen weeks after ETPs listed on the Exchange pursuant to Rules 5P and 8P begin trading.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Sections 6(b)(5) of the Act,⁸ in particular, because it is

⁵ See Securities Exchange Act Release No. 87056 (September 23, 2019), 84 FR 51205 (September 27, 2019) (SR-NYSE-2019-34).

⁶ See *id.*, 84 FR at 51207.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that delaying implementation of Depth Guidelines no later than eighteen weeks after ETPs listed on the Exchange pursuant to Rules 5P and 8P begin trading would remove impediments to and perfect the mechanism of a free and open market and a national market system by allowing the Exchange time to develop Depth Guidelines tailored for how ETPs actually trade on the Exchange, thereby facilitating market making by DMMs in listed ETPs and maintaining the Exchange's current structure to trade listed securities. The proposed rule change is therefore consistent with the existing delayed implementation of Depth Guidelines. Because the purpose of the original delayed implementation was to provide time to develop Depth Guidelines tailored for how ETPs listed on the Exchange would trade, the Exchange believes that beginning the delayed implementation period from the start of trading of ETPs listed under Rules 5P and 8P would serve the same goal, which is to provide time for the Exchange to develop Depth Guidelines tailored for how ETPs listed on the Exchange will trade.

The Exchange further believes that the proposal would not be inconsistent with the public interest and the protection of investors. The proposal would not eliminate or reduce the Rule 104 requirements applicable to DMMs trading ETPs on the Exchange that transactions be effected in a reasonable and orderly manner in relation to the condition of the general market and the market in the particular stock. Rather, the Exchange proposes that implementation of these obligations would be delayed no later than eighteen weeks following the start of ETP trading so that the Exchange can calculate Depth Guidelines based on actual trading data. As noted, the Exchange believes that delayed implementation of Depth Guidelines will allow it to develop more appropriately tailored guidelines that should improve the DMM units' ability to maintain a fair and orderly market and also the broader market for those securities here on the Exchange and on other markets.⁹

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

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

In accordance with Section 6(b)(8) of the Act,¹⁰ the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed change would promote competition by facilitating the trading of Exchange-listed ETPs by DMMs and promoting the display of liquidity on an exchange, which would benefit all market participants, which would enable the Exchange to further compete with unaffiliated exchange competitors that also trade ETPs.

⁹ See Securities Exchange Act Release Nos. 62479 (July 9, 2010), 75 FR 41264, 41265 (July 15, 2010) (SR-NYSEAmex-2010-31).

¹⁰ 15 U.S.C. 78f(b)(8).

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹² Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹³ of the Act to determine whether the proposed rule change should be approved or 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:

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 15 U.S.C. 78s(b)(2)(B).

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-NYSE-2020-04 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSE-2020-04. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions.

You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2020-04 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.¹⁴

J. Matthew DeLesDernier
Assistant Secretary

¹⁴ 17 CFR 200.30-3(a)(12).