

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81340; File No. SR-NYSEAMER-2017-03)

August 8, 2017

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Supplementary Material .01 and .02 to NYSE American Rule 5.2E(j)(3) to Provide for the Inclusion of Cash in an Index Underlying a Series of Investment Company Units

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on July 27, 2017, NYSE American LLC (the “Exchange” or “NYSE American”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II 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 Supplementary Material .01 and .02 to NYSE American Rule 5.2E(j)(3) to provide for the inclusion of cash in an index underlying a series of Investment Company Units, which amendments conform to amendments to NYSE Arca Equities Rule 5.2(j)(3) previously approved by the Commission. 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.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 proposes (1) to amend Supplementary Material .01 and .02 to NYSE American Rule 5.2E(j)(3) to provide for the inclusion of cash in an index underlying a series of Investment Company Units (“Units”), which amendments conform to amendments to NYSE Arca Equities Rule 5.2(j)(3) previously approved by the Commission.⁴

Amendments to NYSE American Rule 5.2E(j)(3)

NYSE American Rule 5.2E(j)(3) permits the trading of Units pursuant to unlisted trading privileges (“UTP”). The Exchange proposes to amend Commentaries .01 and .02 to NYSE American Rule 5.2E(j)(3) to permit trading of Units based on an index or portfolio that includes cash as a component. While Units, like mutual funds, will generally hold an amount of cash, NYSE American Rule 5.2E(j)(3) currently provides that components of an index or portfolio underlying a series of Units consist of securities—namely, US Component Stocks, Non-US Component Stocks, Fixed Income Securities or a combination thereof. As described below, the

⁴ See Securities Exchange Act Release No. 80777 (May 25, 2017) (SR-NYSEArca-2017-30) (order approving amendments to Commentary .01 and Commentary.02 to NYSE Arca Equities Rule 5.2(j)(3) to provide for the inclusion of cash in an index underlying a series of Investment Company Units).

proposed amendments to Supplementary Material .01 and .02 to Rule 5.2E(j)(3) would permit inclusion of cash as an index or portfolio component.

Currently, Supplementary Material .01(a)(A) to NYSE American Rule 5.2E(j)(3) provides that an underlying index or portfolio of US Component Stocks⁵ must meet specified criteria. The Exchange proposes to amend Supplementary Material .01(a)(A) to provide that the components of an index or portfolio underlying a series of Units may also include cash. In addition, the percentage weighting criteria in Supplementary Material .01(a)(A)(1) through (4) each would be amended to make clear that such criteria would be applied only to the US Component Stocks portion of an index or portfolio. For example, in applying the criteria in proposed Supplementary Material .01(a)(A)(1),⁶ if 85% of the weight of an index consists of US Component Stocks and 15 % of the index weight is cash, the requirement that component stocks (excluding Exchange Traded Products) that in the aggregate account for at least 90% of the weight of the US Component Stocks portion of the index or portfolio (excluding such Exchange Traded Products) each will have a minimum market value of \$75 million minimum would be applied only to the 85% portion consisting of US Component Stocks.

Supplementary Material .01 (a)(B) to NYSE American Rule 5.2E(j)(3), which relates to international or global indexes or portfolios, would be amended to provide that components of an index or portfolio underlying a series of Units may consist of (a) only Non-US Component Stocks, (b) Non-US Component Stocks and cash, (c) both US Component Stocks and Non-US

⁵ Rule 5.2E(j)(3) defines "US Component Stock" as an equity security that is registered under Sections 12(b) or 12(g) of the Act or an American Depositary Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Act.

⁶ Supplementary Material .01(a)(A)(1) provides that component stocks (excluding Units and securities defined in Section 2 of Rule 8E, collectively, "Exchange Traded Products") that in the aggregate account for at least 90% of the weight of the US Component Stocks portion of the index or portfolio (excluding such Exchange Traded Products) each shall have a minimum market value of at least \$75 million.

Component Stocks, or (d) US Component Stocks, Non-US Component Stocks and cash. In addition, the percentage weighting criteria in Supplementary Material .01(a)(B)(1) through (4) each would be amended to make clear that such criteria would be applied only to the combined US and Non-US Component Stocks portions of an index or portfolio.

Supplementary Material .02 to NYSE American Rule 5.2E(j)(3) provides generic criteria applicable to trading of Units whose underlying index or portfolio includes Fixed Income Securities.⁷ Currently, Commentary .02(a)(1) provides that an underlying index or portfolio must consist of Fixed Income Securities. The Exchange proposes to amend Commentary .02(a)(1) to provide that the index or portfolio may also include cash. In addition, the percentage weighting criteria in Supplementary Material .02(a)(2), (a)(4) and (a)(6) each would be amended to make clear that such criteria would be applied only to the Fixed Income Securities portion of an index or portfolio. For example, in applying the criteria in proposed Supplementary Material .02(a)(2),⁸ if 90% of the weight of an index or portfolio consists of Fixed Income Securities and 10% of the index weight is cash, the requirement that Fixed Income Security components accounting for at least 75% of the Fixed Income Securities portion of the weight of the index or portfolio each will have a minimum original principal amount outstanding of \$100 million would be applied only to the 90% portion consisting of Fixed Income Securities.

The Exchange notes that the Commission has previously approved NYSE Arca rules

⁷ As defined in Supplementary Material .02 to NYSE American Rule 5.2E(j)(3), Fixed Income Securities are debt securities that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities ("Treasury Securities"), government-sponsored entity securities ("GSE Securities"), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof.

⁸ Supplementary Material .02(a)(2) provides that Fixed Income Security components that in aggregate account for at least 75% of the Fixed Income Securities portion of the weight of the index or portfolio each shall have a minimum original principal amount outstanding of \$100 million or more.

allowing portfolios held by issues of Managed Fund Shares (actively-managed exchange-traded funds) under Commentary .01 to NYSE Arca Equities Rule 8.600 to include cash.⁹ Like the provision in Supplementary Material .01(c) to Exchange Rule 8.600E (which is similar to Commentary .01(c) to NYSE Arca Equities Rule 8.600), which states that there is no limit to cash holdings by an issue of Managed Fund Shares traded under Supplementary Material .01 to Exchange Rule 8.600E, there is no proposed limit to the weighting of cash in an index underlying a series of Units. The Exchange believes this is appropriate in that cash does not, in itself, impose investment or market risk.

The Exchange also proposes to make a non-substantive change to Supplementary Material .02 to Exchange Rule 5.2E(j)(3) to change “shall” to “will” in one place to conform to other usages in Rule 5.2E(j)(3).

The Exchange believes the proposed amendments, by permitting inclusion of cash as a component of indexes underlying series of Units, would provide issuers of Units with additional choice in indexes permitted to underlie Units that are permitted to trade on the Exchange pursuant to the Rule 19b-4(e), which would enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the proposed amendments would provide investors with greater ability to hold Units based on underlying indexes that may accord more closely with an investor’s assessment of market risk, in that some investors may view cash as a desirable component of an underlying index under certain market conditions.

⁹ See Commentary .01(c) to NYSE Arca Equities Rule 8.600.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)¹⁰ that an exchange have rules that are 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, in general, to protect investors and the public interest.

The proposed rule changes are designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are 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, in general, to protect investors and the public interest.

With respect to the proposed amendments to Supplementary Material .01(a)(B)(1) through (4) to Rule 5.2E(j)(3), as described above, the percentage weighting criteria in Supplementary Material .01(a)(B)(1) through (4) to Rule 5.2E(j)(3) each would be amended to make clear that such criteria would be applied only to the combined US and Non-US Component Stocks portions of an index or portfolio. The percentage weighting criteria in Supplementary Material .02(a)(2), (a)(4) and (a)(6) to Rule 5.2E(j)(3) each would be amended to make clear that such criteria would be applied only to the Fixed Income Securities portion of an index or portfolio. Such applications of the proposed amendments would assure that the weighting requirements in Supplementary Material .01 and .02 would continue to be applied only to securities in an index or portfolio, and would not be diluted as a result of inclusion of a cash

¹⁰ 15 U.S.C. 78f(b)(5).

component. In addition, the addition of cash as a permitted component of indexes underlying Units traded on the Exchange pursuant to Rule 19b-4(e) does not raise regulatory issues because cash does not, in itself, impose investment or market risk and is not susceptible to manipulation. The non-substantive change to Supplementary Material .02 to Exchange Rule 5.2E(j)(3) to change “shall” to “will” conforms to other usages in Rule 5.2E(j)(3).

The Exchange believes these proposed amendments, by permitting inclusion of cash as a component of indexes underlying series of Units, would provide issuers of Units with additional choice in indexes permitted to underlie Units that are permitted to trade on the Exchange pursuant to UTP, which would enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the proposed amendments would provide investors with greater ability to hold Units based on underlying indexes that may accord more closely with an investor’s assessment of market risk.

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 purpose of the Act. The Exchange believes the proposed rule change will enhance intermarket competition by allowing trading on the Exchange pursuant to UTP of the above-described securities pursuant to rules that have been previously approved by the Commission for NYSE Arca, Inc.

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

Because the foregoing 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)¹³ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. As noted above, the Exchange believes that the proposed rule change would provide additional choices to issuers of Units and investors in Units. The Exchange also noted that the amendments it is proposing to Rule 5.2E(j)(3) conform to amendments to NYSE Arca Equities Rule 5.2(j)(3) that the Commission previously approved,¹⁴ and that this proposed rule change may enhance competition between the exchanges. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing.¹⁵

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ See supra note 4.

¹⁵ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

At any time within 60 days of the filing of the 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 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:

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-NYSEAMER-2017-03 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-NYSEAMER-2017-03. 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 such 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-NYSEAMER-2017-03 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.¹⁶

Eduardo A. Aleman
Assistant Secretary

¹⁶ 17 CFR 200.30-3(a)(12).