

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-88756; File No. SR-NYSEAMER-2020-32)

April 27, 2020

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 1.1E to Modify the Definition of “UTP Exchange Traded Product” and Rule 5.1E to Incorporate the Modified Definition of “UTP Exchange Traded Product”

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on April 16, 2020, NYSE American LLC (“Exchange”) filed with the Securities and Exchange Commission (“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 (1) Rule 1.1E to modify the definition of “UTP Exchange Traded Product” and (2) Rule 5.1E to incorporate the definition of UTP Exchange Traded Product as set forth in revised Rule 1.1E. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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

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

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 to amend (1) Rule 1.1E to modify the definition of “UTP Exchange Traded Product” and (2) Rule 5.1E to incorporate the definition of UTP Exchange Traded Product as set forth in revised Rule 1.1E.

*Rule 1.1E*

Rule 1.1E(bbb) currently provides that the term “Exchange Traded Product” means 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” means an Exchange Traded Product that trades on the Exchange pursuant to unlisted trading privileges. The Exchange proposes to amend the definition of “UTP Exchange Traded Product” to mean one of the following Exchange Traded Products that trades on the Exchange pursuant to unlisted trading privileges: Equity Linked Notes, 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 Depository Receipts, Trust Issued Receipts, Commodity-Based Trust Shares, Currency Trust Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, Paired Trust Shares, Trust Units, Managed Fund Shares, Managed Trust Securities, and Managed

Portfolio Shares.

This proposed change is based on NYSE National, Inc. (“NYSE National”) Rule 1.1(m) and NYSE Chicago, Inc. (“NYSE Chicago”) Rule 1.1(k).<sup>4</sup> This list is designed to align the rules of the Exchange with the rules of NYSE National and NYSE Chicago and to enumerate the types of Exchange Traded Products to which the Exchange would extend unlisted trading privileges (“UTP”).

*Rule 5.1E*

Rule 5.1E(a)(1) provides that the Exchange may extend UTP to any security that is an NMS stock (as defined in Rule 600 of Regulation NMS under the Act) that is listed on another national securities exchange or with respect to which unlisted trading privileges may otherwise be extended in accordance with Section 12(f) of the Act. Rule 5.1E(a)(2) further specifies that a UTP Exchange Traded Product, which is defined in that Rule as a “new derivative securities product” as defined in Rule 19b-4(e) under the Exchange Act and traded pursuant to Rule 19b-4(e) under the Act, would be subject to the additional rules enumerated in Rule 5.1E(a)(2)(A) - (E).

Because the Exchange proposes to modify the definition of UTP Exchange Trading Product in Rule 1.1E(bbb) to conform to the rules of NYSE National and NYSE Chicago, the Exchange proposes to amend Rule 5.1E(a)(2) to eliminate redundant text and cross reference the term “UTP Exchange Traded Product” as it is defined in Rule 1.1E. This proposed change would also conform Rule 5.1E(a)(2) with the comparable NYSE National rule.

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<sup>4</sup> NYSE National and NYSE Chicago have filed proposed rule changes for immediate effectiveness to amend their respective rules to add Managed Portfolio Shares to their definitions of UTP Exchange Traded Products. See SR-NYSENAT-2020-16 (filed April 16, 2020) and SR-NYSECHX-2020-13 (filed April 16, 2020).

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>6</sup> in particular, because it is designed to remove impediments to and perfect the mechanism of a free and open market, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Exchange believes its proposed rule change ensures that Rule 1.1E identifies and publicly states the complete list of Exchange Traded Products to which UTP may be extended for trading on the Exchange. The Exchange also believes that the proposed rule change removes impediments to and perfects the mechanism of a free and open market, promotes just and equitable principles of trade, and protects investors and the public interest by promoting consistency with the rules of the Exchange's affiliated markets and by providing additional specificity, clarity, and transparency in the Exchange's rules with respect to the Exchange Traded Products that may be traded on a UTP basis on the Exchange.

The Exchange believes that its proposal to amend Rule 5.1E(a)(2) also removes impediments to and perfects the mechanism of a free and open market, promotes just and equitable principles of trade, and protects investors and the public interest because it proposes to conform this rule governing the trading of UTP Exchange Traded Products with the comparable rule of the Exchange's affiliated market, NYSE National, which has been approved by the Commission.<sup>7</sup> The proposed rule change would also remove impediments to and perfect the

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

<sup>6</sup> 15 U.S.C. 78f(b)(4) & (5).

<sup>7</sup> In its Order approving the NYSE National rule on which this proposed change is based, the Commission found that the NYSE National rules set forth an "appropriate framework for the trading of Exchange Traded Products on a UTP basis on the Exchange" and are

mechanism of a free and open market and a national market system and protect investors and the public interest by promoting continuity across affiliated exchanges.

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. The proposed change would conform Exchange rules, as described herein, with the comparable rules of its affiliated exchanges, NYSE National and NYSE Chicago, and permit UTP trading of Exchange Traded Products on the Exchange in a manner consistent with its affiliated exchanges.

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 Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

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consistent with Section 6(b)(5) of the Act. See Securities and Exchange Act Release No. 83289 (May 17, 2018), 83 FR 23968 (May 23, 2018), at 23975.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and 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. The Exchange has satisfied this requirement.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>10</sup> normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>11</sup> the Commission may 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. The Commission notes that the Exchange's proposal would conform the Exchange's rules, as described herein, to the corresponding rules of its affiliated exchanges.<sup>12</sup> Accordingly, the Commission believes that the proposal raises no new or novel regulatory issues and waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission therefore waives the 30-day operative delay and designates the proposed rule change to be operative upon filing.<sup>13</sup>

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.

#### 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:

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<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> See NYSE National Rules 1.1 and 5.1 and NYSE Chicago Rule 1.1.

<sup>13</sup> 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).

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAMER-2020-32 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-2020-32. 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-NYSEAMER-2020-32 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).