

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-89367; File No. SR-NYSEAMER-2020-49)

July 21, 2020

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 1.1E to Include Active Proxy Portfolio Shares, Tracking Fund Shares, Proxy Portfolio Shares, and Index Fund Shares

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 July 10, 2020, NYSE American LLC (“NYSE American” or “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 Rule 1.1E to include Active Proxy Portfolio Shares, Tracking Fund Shares, Proxy Portfolio Shares, and Index Fund Shares in the definition of “UTP Exchange Traded Product.” 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 it

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 1.1E(bbb), which sets forth the meanings of “Exchange Traded Product” and “UTP Exchange Traded Product” as those terms are used in Exchange rules.

Specifically, the Exchange proposes to amend the definition of “UTP Exchange Traded Product” to include Active Proxy Portfolio Shares listed pursuant to NYSE Arca, Inc. (“NYSE Arca”) Rule 8.601-E, Tracking Fund Shares listed pursuant to Cboe BZX Exchange, Inc. (“BZX”) Rule 14.11(m), and Proxy Portfolio Shares which may in the future be listed pursuant to Nasdaq Stock Market LLC (“Nasdaq”) Rule 5750⁴ as additional types of Exchange Traded Products (“ETPs”) that may trade on the Exchange pursuant to unlisted trading privileges (“UTP”).

⁴ Active Proxy Portfolio Shares, Tracking Fund Shares, and Proxy Portfolio Shares are substantially similar products with different names and generally refer to shares of actively managed exchange-traded funds for which the portfolio is disclosed in accordance with standard mutual fund disclosure rules. See Securities Exchange Act Release No. 89185 (June 29, 2020) (order approving NYSE Arca Rule 8.601-E); Securities Exchange Act Release No. 88887 (May 15, 2020), 85 FR 30990 (May 21, 2020) (order approving BZX Rule 14.11(m)); Securities Exchange Act Release No. 89110 (June 22, 2020), 85 FR 38461 (June 26, 2020) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Nasdaq Rule 5750 to List and Trade Proxy Portfolio Shares). On June 4, 2020, BZX commenced trading its first securities listed under BZX Rule 14.11(m) (Fidelity Blue Chip Growth ETF (FBCG), Fidelity Blue Chip Value ETF (FBCV), and Fidelity New Millennium ETF (FMIL)). Although Nasdaq has rules pertaining to Proxy Portfolio Shares, it does not yet list any such product.

To effect this change, the Exchange proposes to add a bullet point listing “Active Proxy Portfolio Shares listed pursuant to NYSE Arca, Inc. Rule 8.601-E, Tracking Fund Shares listed pursuant to Cboe BZX Exchange, Inc. Rule 14.11(m), and Proxy Portfolio Shares listed pursuant to Nasdaq Stock Market LLC Rule 5750” in Rule 1.1E(bbb) to include them in the enumerated list of ETPs that may trade on the Exchange on a UTP basis. The Exchange also proposes non-substantive changes to accommodate the addition of this bullet point as the final item in the bulleted list in Rule 1.1E(bbb).

The Exchange also proposes to amend Rule 1.1E(bbb) to include Index Fund Shares listed pursuant to BZX Rule 14.11(c) or Nasdaq Rule 5705(b) as a type of ETP that may trade pursuant to UTP. To effect this change, the Exchange proposes to amend the existing bullet point listing “Investment Company Units” to include Index Fund Shares as the alternative name for the same product. Accordingly, the Exchange proposes to revise the bullet point to list “Investment Company Units listed pursuant to NYSE Arca, Inc. Rule 5.2-E(j)(3) and Index Fund Shares listed pursuant to Cboe BZX Exchange, Inc. Rule 14.11(c) or Nasdaq Stock Exchange LLC Rule 5705(b).”

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁶ 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.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) & (5).

The proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market, promote just and equitable principles of trade, and, in general, to protect investors and the public interest because it modifies Rule 1.1E(bbb) to state the complete list of ETPs that may trade on a UTP basis on the Exchange, providing specificity, clarity, and transparency in the Exchange's rules. Moreover, the proposed rule change will facilitate the trading of additional types of ETPs on the Exchange pursuant to UTP, thereby enhancing competition among market participants for the benefit of investors and the marketplace.

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 provide the public and investors with up-to-date information about the types of ETPs that can trade on the Exchange on a UTP basis and would promote competition by adding additional types of ETPs that may trade on the Exchange pursuant to UTP.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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; or (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,

it has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(6) thereunder.⁸

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act⁹ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁰ 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 upon filing. The Exchange believes that a waiver of the operative delay is consistent with the protection of investors and the public interest because it would allow for the immediate trading, pursuant to UTP, of Active Proxy Portfolio Shares, Tracking Fund Shares, and Proxy Portfolio Shares on the Exchange and therefore would provide investors with an additional trading venue option. In addition, the proposal would specifically name products substantially similar to Investment Company Units known as Index Fund Shares on other exchanges in the list of product that may trade on the Exchange pursuant to unlisted trading privileges. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 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.

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 17 CFR 240.19b-4(f)(6)(iii).

interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.¹¹

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:

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-2020-49 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-2020-49. 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>).

¹¹ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2020-49 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.¹²

J. Matthew DeLesDernier
Assistant Secretary

¹² 17 CFR 200.30-3(a)(12).