

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-83134; File No. SR-NYSE-2018-17)

April 30, 2018

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 13

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on April 20, 2018, New York Stock Exchange LLC (“NYSE” or the “Exchange”) 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 the preamble to Rule 13 to provide that the definition of “retail” in subsection (f)(2) be applicable to trading of UTP Securities on Pillar trading platform. 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

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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.

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

On April 9, 2018, the Exchange introduced trading of UTP Securities on the Exchange on the Pillar trading platform.<sup>4</sup> As described in the UTP Trading Rules Filing, for each current Exchange rule that is not applicable for trading on the Pillar trading platform, the Exchange added a preamble to such rule providing that “this rule is not applicable to trading UTP Securities on the Pillar trading platform.” Exchange rules governing equities trading that do not have this preamble currently govern Exchange operations on Pillar.<sup>5</sup>

The Exchange proposes to amend the preamble to Rule 13 to provide that the definition of “retail” modifier in subsection (f)(2) would be applicable to the trading of UTP Securities on the Pillar trading platform.

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<sup>4</sup> See Securities Exchange Act Release No.82945 (March 26, 2018), 83 FR 13553, 13555 (March 29, 2018) (SR-NYSE-2017-36) (the “UTP Trading Rules Filing”). The term “UTP Security” means a security that is listed on a national securities exchange other than the Exchange and that trades on the Exchange pursuant to unlisted trading privileges. See Rule 1.1(ii).

<sup>5</sup> See UTP Trading Rules Filing, 83 FR at 13554, n.17.

Under Rule 13(f)(2)(A), an order designated with a “retail” modifier is an agency order or a riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a member organization, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. An order with a “retail” modifier is separate and distinct from a “Retail Order” under Rule 107C. Under subsection (C), to submit a “retail” order, a member organization must also submit an attestation, in a form prescribed by the Exchange, that substantially all orders submitted as “retail” will qualify as such. Finally, a member organization must have written policies and procedures reasonably designed to assure that it will only designate orders as “retail” if all requirements of paragraph (f)(4)(A) are met.<sup>6</sup> The Exchange would determine if and when a member organization is disqualified from submitting “retail” orders and, when disqualification determinations are made, the Exchange would provide a written

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<sup>6</sup> Rule 13(f)(2)(D) provides that such written policies and procedures must require the member organization to (i) exercise due diligence before entering a “retail” order to assure that entry as a “retail” order is in compliance with the requirements of Rule 13(f)(4)(A), and (ii) monitor whether orders entered as “retail” orders meet the applicable requirements. If a member organization represents “retail” orders from another broker-dealer customer, the member organization’s supervisory procedures must be reasonably designed to assure that the orders it receives from such broker-dealer customer that it designates as “retail” orders meet the definition of a “retail” order in Rule 13(f)(4)(A). Further, the member organization must (i) obtain an annual written representation, in a form acceptable to the Exchange, from each broker-dealer customer that sends it orders to be designated as “retail” orders that entry of such orders as “retail” orders will be in compliance with the requirements of Rule 13(f)(4)(A); and (ii) monitor whether its broker-dealer customer’s “retail” order flow meets the applicable requirements.

disqualification notice to the member organization.<sup>7</sup> A disqualified member organization may (1) appeal such disqualification, and/or (B) resubmit the attestation described in Rule 13(f)(4)(C) 90 days after the date of the disqualification notice from the Exchange.<sup>8</sup>

The proposed applicability of the definition of “retail” modifier to the trading of UTP Securities on the Pillar trading platform would enable the Exchange to propose transaction pricing related to retail orders in UTP Securities that add liquidity to the Exchange, as is currently the case for orders designated as “retail” in Tape A securities.<sup>9</sup> As is also the case with orders designated as “retail” in Tape A securities, member organizations not wishing to be eligible for the proposed pricing would be free to not designate orders in UTP Securities as “retail.” The Exchange believes providing member organizations with the ability to submit orders designated as “retail” in UTP Securities would incentivize the submission of additional retail order flow to a public market, to the benefit of the marketplace and all market participants.

To effect this change, the Exchange proposes to amend the preamble to Rule 13 by adding the clause “With the exception of the definition of a “retail” modifier in Rule

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<sup>7</sup> See Rule 13(f)(4)(E).

<sup>8</sup> If a member organization disputes the Exchange’s decision to disqualify it from submitting “retail” orders, the member organization may request, within five business days after notice of the decision is issued by the Exchange, that the “retail” order “Hearing Panel” review the decision to determine if it was correct. The Hearing Panel would consist of the NYSE’s Chief Regulatory Officer (“CRO”), or a designee of the CRO, and two officers of the Exchange designated by the Chief Executive Officer of ICE Group. The Hearing Panel would review the facts and render a decision within the time frame prescribed by the Exchange. The Hearing Panel may overturn or modify an action taken by the Exchange under this Rule. A determination by the Hearing Panel shall constitute final action by the Exchange. See Rule 13(f)(4)(F).

<sup>9</sup> See page 5 of the current Price List, available at [https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE\\_Price\\_List.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf).

13(f)(2)” immediately before the phrase “This Rule is not applicable to trading UTP Securities on the Pillar trading platform.”

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>11</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change is consistent with these principles because it would increase competition among execution venues by enabling the Exchange to file a separate proposed rule change to establish fees and credits relating to orders in UTP Securities designated as “retail,” thereby encouraging the submission of retail order flow in UTP Securities to a public market. The Exchange believes that promoting submission of orders designated as “retail” in UTP Securities would attract additional retail order flow to a public market and that such a process would contribute to perfecting the mechanisms of a free and open market and a national market system. The Exchange further believes that promoting such orders in UTP Securities would not permit unfair discrimination between customers, issuers, brokers, or dealers because, as is currently the case for orders designated as “retail” in Tape A securities, promoting orders

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<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

designated as “retail” in UTP Securities would promote a competitive process around retail executions and would result in greater transparency and competitiveness surrounding executions of retail flow.<sup>12</sup>

The Exchange believes that the proposed change is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade because it would contribute to increasing the proportion of retail flow in UTP Securities that are executed on a registered national securities exchange and would protect investors and the public interest by contributing to investors’ confidence in the fairness of their transactions and because it would benefit all investors by deepening the Exchange’s liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

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

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. Instead, the Exchange believes that the proposed change would increase competition among execution venues and encourage additional liquidity in UTP Securities. In this regard, the Exchange believes that the transparency and competitiveness of attracting additional executions on an exchange market would encourage competition. The proposal would also promote competition on the Exchange because the ability to designate an order as “retail” would be available to all member

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<sup>12</sup> See Securities Exchange Act Release No.72253 (May 27, 2014), 79 FR 31353, 31355 (June 2, 2014) (SR-NYSE-2014-26) (Notice).

organizations that submit qualifying orders and satisfy the other related requirements.

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; 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>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>15</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>16</sup> 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. According to the Exchange, waiver of the operative delay would allow the Exchange to implement, without undue delay, a process

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 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.

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii).

that is already in place for Tape A securities that would incentivize the submission of retail order flow in UTP securities to a public market to the benefit of the marketplace and all market participants. The Commission believes that the proposal raises no new or novel issues and that waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.<sup>17</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. 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2018-17 on the subject line.

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<sup>17</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).



Paper comments:

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

All submissions should refer to File Number SR-NYSE-2018-17. 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-2018-17 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>18</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).