

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-86866; File No. SR-NYSE-2019-47)

September 4, 2019

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 103B

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 August 22, 2019, 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, 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 103B, which governs the allocation of securities to Designated Market Makers (“DMMs”). 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 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 103B, which governs the allocation of securities to qualified DMM units, to make certain provisions applicable to Exchange Traded Products (“ETPs”) listing on the Exchange. Specifically, as described in more detail below, the Exchange proposes to:

- amend Rule 103B(VI)(F)(1), which governs the allocation of closed-end management investment companies (“Funds”), to make it applicable also to the allocation of ETPs, and to lengthen to two years (from nine months) the time within which additional Funds or ETPs may be allocated under this provision without recommencing the Rule 103B(III) allocation process; and
- amend Rule 103B(VIII), which allows a listing company that transfers securities from NYSE Arca, Inc. (“NYSE Arca”) to the Exchange to waive the Rule 103B(III) allocation process and select as its registered DMM unit the same unit that was previously assigned as its NYSE Arca Lead Market Maker (“LMM”) unit, to make it applicable also to issuers of ETPs transferring from NYSE Arca to the Exchange.

Background

Currently, the Exchange trades ETPs on its Pillar trading platform on an unlisted trading privileges (“UTP”) basis, subject to Pillar Platform Rules 1P - 13P.⁴ In the next phase of

⁴ “UTP Security” is defined as a security that is listed on a national securities exchange other than the Exchange and that trades on the Exchange pursuant to unlisted trading

Pillar, the Exchange is transitioning the trading of Exchange-listed securities to the Pillar trading platform, which means that DMMs will be trading on Pillar in their assigned securities.⁵ Once transitioned to Pillar, such securities will also be subject to the Pillar Platform Rules 1P - 13P.

Rules 5P (Securities Traded) and 8P (Trading of Certain Exchange Traded Products) provide that certain ETPs⁶ may be listed on the Exchange provided that they (1) meet the applicable requirements set forth in those rules, and (2) do not have any component NMS Stock⁷ that is listed on the Exchange or is based on, or represents an interest in, an underlying index or reference asset that includes an NMS Stock listed on the Exchange. ETPs listed under Rules 5P and 8P would be “Tape A” listings and would be traded pursuant to the rules applicable to NYSE-listed securities.

The Exchange does not currently list any ETPs and anticipates that it would not do so until all Exchange-listed securities transition to Pillar. Once an ETP is listed on the Exchange, it will be assigned to a DMM pursuant to Rule 103B.

Current Rule 103B

Rule 103B(III) sets out the procedures under which DMM units are assigned to securities listed on the Exchange: an issuer may either select a DMM unit after interviewing all DMM units eligible to participate in the allocation process (Rule 103B(III)(A)), or delegate the

privileges. See Rule 1.1.

⁵ The Exchange began transitioning Exchange-listed securities to Pillar on August 5, 2019. See <https://www.nyse.com/Pillar>. On July 30, 2019, the Exchange published a Trader Update setting out a complete symbol migration schedule, available at <https://www.nyse.com/trader-update/history#>.

⁶ Rule 1.1P(k) defines “Exchange Traded Product” as a security that meets the definition of “derivative securities product” in Rule 19b-4(e) under the Act.

⁷ NMS Stock is defined in Rule 600 of Regulation NMS, 17 CFR 242.600(b)(47).

authority for selecting its DMM unit to the Exchange (Rule 103B(III)(B)).

In addition, Rule 103B(VI)(F)(1) currently sets out an abbreviated DMM allocation process that issuers of closed-end management investment companies (“Funds”) may use when they list additional Funds on the Exchange within nine months of participating in the Rule 103B(III) allocation process. For those subsequent listings within the designated nine-month period, the issuer may choose the same DMM unit that it or the Exchange selected for the first Fund, or it may select a different DMM unit from the group it interviewed in the allocation process for the first Fund.

Current Rule 103B(VI)(F) recognizes that when an issuer of Funds lists an initial Fund on the Exchange, that issuer has an opportunity to meet with all of the DMM units in connection with selecting a DMM for that first Fund. Because that issuer has already interviewed the DMM units, the Rule provides that the issuer does not need to repeat that process if it chooses to list additional Funds on the Exchange in the following months. This Rule therefore reduces duplicative administrative burdens for both issuers and DMM units in connection with listing Funds from the same issuer.

In addition, Rule 103B(VIII) currently provides that if a listing company transferring from NYSE Arca to the Exchange was assigned an NYSE Arca LMM unit that is also a registered DMM unit on the Exchange, then the listing company may waive the Rule 103B(III) allocation process and select as its registered DMM unit the same unit that was previously assigned as its NYSE Arca LMM unit.

As described below, the Exchange proposes to expand the scope of both of these provisions to make them applicable to ETPs trading on the Exchange.

Proposed Rule Change

The Exchange believes that it is appropriate to extend the current allocation policy for Funds to ETPs because both share a common structure in that a single issuer may be responsible for multiple ETPs that are each separate listings. Therefore, an issuer of ETPs that meets with DMM units in connection with one listing of an ETP on the Exchange would have already met with all DMM units that it could potentially select for its subsequent ETP listings. Extending the current allocation policy for Funds to ETPs would therefore serve the same purpose of reducing duplicative administrative burdens for both issuers of ETPs and DMM units.

The Exchange proposes the following changes to Rule 103B to expand the applicability of Rules 103B(VI)(F) and 103B(VIII) to ETPs, as follows.

Rule 103B(VI)(F) – Allocation of Closed-End Management Investment Companies (“Funds”) or Exchange Traded Products (“ETPs”) from the Same Issuer

Rule 103B(VI)(F) is currently titled “Allocation of Group of Closed-End Management Investment Companies (“Funds”)” and describes the process by which the issuer of a Fund may select the DMM unit for additional Funds that it issues within nine months of the first Fund, without recommencing the allocation process in Rule 103B(III).

The Exchange proposes to add “or Exchange Traded Products (“ETPs”)” to the current title to make clear that the provision would apply to issuers of ETPs as well as to issuers of Funds. The Exchange also proposes to delete “Group of” from the title and add the phrase “from the Same Issuer,” to clarify that the rule applies whenever the same issuer issues more than one Fund or ETP, which is how the term “Group” is currently used in the Rule.

To incorporate ETPs into the existing Rule, the Exchange proposes to restructure Rule

103B(VI)(F)(1) by adding the subtitle “Two-Year Allocation Policy” and dividing section (1) into subsections (a) through (d), as described below.

As noted in the proposed title of this subparagraph, the Exchange proposes to lengthen to two years, from the current nine months, the time period within which an issuer of Funds or ETPs can choose a DMM unit from among those it previously interviewed, without recommencing the Section III allocation process and re-interviewing DMM units. The Exchange believes it is appropriate to lengthen this time period because the population of DMM units on the Exchange is relatively stable, and neither the population of DMM units nor their qualifications are likely to change materially within a two-year period. This change will reduce the administrative burden on the issuers of Funds or ETPs and on DMM units that would result from the requirement that an issuer re-interview all DMM units at least every nine months if such issuer lists an additional Fund or ETP.

Proposed Rule 103B(VI)(F)(1)(a) would include text from the current first sentence of current Rule 103B(VI)(F)(1), with the following changes. The proposed revised text would add both references to ETPs and a cross-reference to Section VIII of Rule 103B. The proposed new text would provide that the first time an issuer seeks to list a Fund or ETP on the Exchange, the issuer would be subject to the allocation process pursuant to Section III of Rule 103B, unless the listed security is eligible for an allocation under Section VIII of Rule 103B. With this change, the Exchange proposes to delete the phrase “Funds listing on the Exchange pursuant to this policy” and replace it with “The first time an issuer seeks to list a Fund or ETP on the Exchange, the issuer,” to clarify that issuers of ETPs, not just issuers of Funds, are subject to the allocation process described in Rule 103B(III).

The proposed change to cross reference Section VIII of Rule 103B would provide

specificity that Section VIII provides an exception to the general requirement that an issuer of an ETP on the Exchange is subject to the Section III allocation process if such issuer is transferring an ETP from NYSE Arca to the Exchange. (The Exchange’s proposed amendments to Section VIII are discussed further below.)

Proposed Rule 103B(VI)(F)(1)(b) would include text from the current second and third sentences of current Rule 103B(VI)(F)(1), with the following changes. To make this rule text applicable to ETPs, the Exchange proposes to add the phrase “or ETP” after each instance of the word “Fund,” and “or ETPs” after each instance of the word “Funds,” or replace references to the term “fund” with the term “issuer” to clarify that the provision applies not just to Funds but also to ETPs. The Exchange also proposes the substantive amendment described above, of replacing the reference to “nine months” with a reference to “two years.” The Exchange further proposes to amend the current second sentence of Rule 103B(VI)(F)(1) (which would be the first sentence of proposed Rule 103B(VI)(F)(1)(b)) to delete the text indicating that the nine-month time period runs from the date of the issuer’s “initial listing” on the Exchange, and to add language clarifying that the period runs from the date of “an allocation pursuant to Section III of this Rule.” The Exchange proposes this difference to be clear that the Two-Year Allocation Policy would be applicable only if an issuer’s initial listing was pursuant to Section III of Rule 103B. If an initial listing for an issuer of an ETP was pursuant to Section VIII of Rule 103B, as described below, the Two-Year Allocation Policy would not be applicable because such issuer would not have had an opportunity to review other DMM units.

Proposed Rule 103B(VI)(F)(1)(c) would be new rule text that is intended to provide clarity of what an issuer needs to do if it lists additional Funds or ETPs after the end of the two-year period. As proposed, after the two-year anniversary of the date on which the issuer’s last

allocation pursuant to Section III was made, if the issuer seeks to list additional Funds or ETPs on the Exchange, it would be subject to the allocation process pursuant to either Section III or VIII of this Rule. The new sentence makes clear that if more than two years has passed since an issuer of Funds or ETPs undertook the Section III allocation process, the issuer can no longer rely on the second sentence of Rule 103B(VI)(F)(1) to choose a DMM unit from among those it previously interviewed. This limitation ensures that issuers of Funds or ETPs do not make their DMM unit selections based on stale information, but must re-interview DMM units at least once every two years (unless the issuer has an ETP that is transferring from NYSE Arca and is eligible for the Section VIII allocation process).

Proposed Rule 103B(VI)(F)(1)(d) would include text from the current fourth sentence of current Rule 103B(VI)(F)(1), with the following proposed changes. The Exchange proposes to amend this sentence to add “or ETP” after the word “Fund,” to clarify that this provision applies to ETPs as well as Funds. The Exchange also proposes to replace the reference to the designated “nine month period” to “two year period,” to conform to the proposed amendment discussed above. The Exchange also proposes to add language to the end of the fourth sentence of Rule 103B(VI)(F)(1) to make clear that the period during which the DMM unit will not be included for consideration for subsequent listings is the “Penalty Period as described in Section II(J)” of Rule 103B, not the entire remainder of the two year period.

The Exchange proposes a non-substantive change to amend Rule 103B(VI)(F)(1) by capitalizing the word “Fund” wherever it appears. The Exchange also proposes to make a non-substantive change to the way it cites to Rule 103B(III) throughout Rule 103B(VI)(F)(1), by deleting references to “NYSE Rule 103B, Section III” and replacing them with “Section III of this Rule” wherever they appear.

The Exchange also proposes to make a grammatical correction to the fourth sentence of Rule 103B(VI)(F)(1) by changing “from participating” to “to participate.”

Rule 103B(VIII) – Provisions for Allocation of Listed Securities Transferring from NYSE Arca to the NYSE

Rule 103B(VIII) is currently titled “Provisions for Allocation of Listing Companies Transferring from NYSE Arca, Inc. (“NYSE Arca”) to the NYSE.” The Exchange proposes to amend this Section of the Rule to specify that ETP listings that transfer from NYSE Arca to the Exchange would also be eligible for this provision. The Exchange believes that issuers of ETPs should be able to benefit from the efficiencies of current Rule 103B(VIII) if an ETPs is transferred from NYSE Arca and the assigned LMM is also a DMM unit on the Exchange. To effect this change, the Exchange proposes to amend the title by replacing the phrase “Listing Companies” with “Listed Securities” because the latter term is broad enough to encompass not only equity listings, but also ETPs.

The Exchange proposes to amend the first sentence of Rule 103B(VIII)(A) to remove the term “listing company” in two places, replacing the first with “listed security” and the second with “issuer.” The new terms are broad enough to encompass not only equity listings, but also ETPs. The Exchange also proposes a non-substantive amendment to change the word “which” in the first sentence to “that” and to remove the comma preceding the word “which.”

The Exchange also proposes to amend the second sentence of Rule 103B(VIII)(A) and Rule 103B(VIII)(B) to replace the term “listing company” with the word “issuer” each time it occurs. Again, the term “issuer” is broad enough to encompass not only issuers of equity listings, but also ETPs.

Finally, the Exchange proposes to make a non-substantive change to the way it cites to

Rule 103B(III) throughout Rule 103B(VIII), by deleting references to “NYSE Rule 103B, Section III” and replacing them with “Section III of this Rule” wherever they appear.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ in particular, because it is 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 mechanism 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 the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system by providing a method for allocating ETPs to DMM units once ETPs begin listing on the Exchange. As noted above, after the Exchange transitions Exchange-listed securities to Pillar, it will begin listing ETPs on the Exchange pursuant to Rules 5P and 8P. Because DMMs would be assigned to any ETPs listed on the Exchange, the Exchange proposes to amend Rule 103B to specify how ETPs would be allocated to DMMs. The Exchange believes that it is appropriate to model the DMM allocation process for ETPs on the process already in place for Funds in Rule 103B(VI)(f)(1) because, like Fund issuers, issuers of ETPs may seek to issue multiple ETPs in succession. Such ETP issuers would face significant administrative burdens if they were

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

required to undertake the entire Section III allocation process, complete with interviews of all DMM units, each time they sought to list another ETP. DMM units would also face significant administrative burdens from participating in such interviews before the listing of each new ETP.

The Exchange also believes that the proposal to lengthen to two years, from nine months, the time period after which Fund and ETP issuers must participate in the Rule 103B(III) allocation process would remove impediments to and perfect the mechanism of a free and open market and a national market system by eliminating the administrative burden of re-interviewing DMM units too frequently. The Exchange believes it is appropriate to lengthen this time period because the population of DMM units on the Exchange is relatively stable, and neither the population of DMM units nor their qualifications are likely to change materially within a two-year period. This change will reduce the administrative burden on the issuers of Funds or ETPs and on DMM units that would result from the requirement that issuers re-interview all DMM units at least every nine months. After two years, issuers of Funds or ETPs would be required to participate in the Rule 103B(III) allocation process (unless the issuer transfers an ETP from NYSE Arca and is eligible for the Section VIII allocation process), so that their DMM unit selections are not based on stale information.

Similarly, the Exchange believes that it would remove impediments to and perfect the mechanism of a free and open market and a national market system to permit issuers of ETPs previously listed on NYSE Arca to choose to maintain their current LMM units as their DMM units when such ETPs are transferred from NYSE Arca to the Exchange. This option already exists for issuers of operating company listings transferring from NYSE Arca to the Exchange, and enhances the efficiency of transferring listings between exchanges by allowing issuers and DMM units to maintain their preexisting relationships with respect to the transferred securities.

The issuers of ETPs would benefit from the same efficiencies when transferring their listings from NYSE Arca to the Exchange.

Finally, the Exchange’s proposal to make various technical, non-substantive changes to the text of the rules—by adding subheadings, adding subsection numbering, correcting capitalization and grammar, standardizing the format for citations to the Exchange’s rules, and adding clarifying text—adds clarity and transparency to the Exchange’s Rules and reduces potential investor confusion, which would remove impediments to and perfect the mechanism of a free and open market and a national market system.

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 because it merely provides a process for the allocation of DMM units to ETPs listing on the Exchange. Nor does the Exchange believe that the proposed changes would impose an undue burden on intramarket competition between the DMM units, because all eligible DMM units will participate in the original Rule 103B(III) allocation process for an issuer’s first ETP or Fund that lists on the Exchange, such that the issuer may choose from among those DMM units with respect to all ETPs or Funds listed on the Exchange in the following two years. Additionally, all DMM units will participate in any subsequent Rule 103B(III) process for allocation of an issuer’s ETPs or Funds that are listed more than two years later.

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 Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ 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)¹² 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:

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-2019-47 on the subject line.

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 15 U.S.C. 78s(b)(2)(B).

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-2019-47. 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 20549-1090 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-2019-47 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.¹³

Jill M. Peterson
Assistant Secretary

¹³ 17 CFR 200.30-3(a)(12).