

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-87329; File No. SR-NYSE-2019-54)

October 17, 2019

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Permit the Exchange to List and Trade Exchange Traded Products

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 October 3, 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 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 permit the Exchange to list and trade Exchange Traded Products that have a component NMS Stock listed on the Exchange or that are based on, or represent an interest in, an underlying index or reference asset that includes an NMS Stock listed on the Exchange. 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.

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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.

## 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 to permit the Exchange to list and trade Exchange Traded Products (“ETPs”)<sup>4</sup> that have a component NMS Stock<sup>5</sup> listed on the Exchange or that are based on, or represent an interest in, an underlying index or reference asset that includes an NMS Stock

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<sup>4</sup> 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. ETPs include, for example, securities listed and traded on the Exchange pursuant to the following Exchange rules: Rule 5.2(j)(3) (Investment Company Units); Rule 5.2(j)(5) (Equity Gold Shares); Rule 5.2(j)(6) (Index- Linked Securities); Rule 8.100 (Portfolio Depositary Receipts); Rule 8.200 (Trust Issued Receipts); Rule 8.201 (Commodity-Based Trust Shares); Rule 8.202-E (Currency Trust Shares); Rule 8.203 (Commodity Index Trust Shares); Rule 8.204 (Commodity Futures Trust Shares); Rule 8.600 (Managed Fund Shares); and Rule 8.700 (Managed Trust Securities).

<sup>5</sup> NMS Stock is defined in Rule 600 of Regulation NMS, 17 CFR 242.600(b)(48) as “any NMS security other than an option.” “NMS Security” means any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options.” See 17 CFR 242.600(b)(47). As the Commission has explained, the term “NMS Security” refers to “exchange-listed equity securities and standardized options, but does not include exchange-listed debt securities, securities futures, or open-end mutual funds, which are not currently reported pursuant to an effective transaction reporting plan.” See Question 1.1 in the “Responses to Frequently Asked Questions Concerning Large Trader Reporting,” available at <https://www.sec.gov/divisions/marketreg/large-trader-faqs.htm>.

listed on the Exchange.

### Background

Currently, the Exchange trades securities, including ETPs, on its Pillar trading platform on an unlisted trading privileges (“UTP”) basis, subject to Pillar Platform Rules 1P - 13P.<sup>6</sup> ETPs traded on a UTP basis on the Exchange are not assigned to a Designated Market Maker (“DMM”) but are available for Floor brokers to trade in Floor-based crossing transactions.<sup>7</sup>

The Exchange’s rules also permit it to list ETPs under Rules 5P and 8P. Specifically, Rules 5P (Securities Traded) and 8P (Trading of Certain Exchange Traded Products) provide for the listing of certain ETPs on the Exchange that (1) meet the applicable requirements set forth in those rules, and (2) do not have any component NMS Stock 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.

Accordingly, once an ETP is listed, it will be assigned to a DMM pursuant to Rule 103B and the assigned DMM will have obligations vis-à-vis such securities as specified in Rule 104, including facilitating the opening, reopening, and closing of such securities.<sup>8</sup>

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<sup>6</sup> “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 privileges. See Rule 1.1.

<sup>7</sup> See Securities Exchange Act Release No. 82945 (March 26, 2018), 83 FR 13553, 13568 (March 29, 2018) (SR-NYSE-2017-36) (approving Exchange rules to trade securities on a UTP basis on the Pillar trading platform).

<sup>8</sup> See Securities Exchange Act Release No. 87056 (September 23, 2019), 84 FR 51205 (September 27, 2019) (SR-NYSE-2019-34) (order approving amendments to Rule 104 to specify DMM requirements for ETPs listed on the Exchange pursuant to Rules 5P and 8P).

### Proposed Rule Change

The Exchange proposes to expand the ETPs that would be eligible to list and trade on the Exchange to include ETPs that have a component NMS Stock or that are based on, or represent an interest in, an underlying index or reference asset that includes an NMS Stock listed on the Exchange. To effectuate this change, the Exchange proposes to delete the preambles to Rules 5P and 8P currently providing that the Exchange will not list such ETPs.

The proposal would permit the Exchange to list and trade on the NYSE Trading Floor<sup>9</sup> both ETPs and one or more component NMS Stocks forming part of the underlying ETP index or portfolio (“side-by-side trading”<sup>10</sup>). Because listed securities are assigned to DMMs, the proposed elimination of the current restriction could result in DMMs being assigned ETPs that may have one or more component NMS Stocks forming part of the underlying ETP index or portfolio that are also assigned to the DMM (“integrated market making”<sup>11</sup>). The Commission has approved integrated market making and side-by-side trading for “broad-based” ETPs and

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<sup>9</sup> The term “Trading Floor” is defined in Rule 6A to mean the restricted-access physical areas designated by the Exchange for the trading of securities, commonly known as the “Main Room” and the “Buttonwood Room.”

<sup>10</sup> “Side-by-side trading” refers to the trading of an equity security and its related derivative product at the same physical location, though “not necessarily by the same specialist or specialist firm.” Securities Exchange Act Release No. 46213 (July 16, 2002), 67 FR 48232, 48233 (July 23, 2002) (SR-Amex-2002-21) (“Release No. 46213”) (order approving side-by-side trading and integrated market making of broad index-based ETFs and related options); see also Securities Exchange Act Release No. 45454 (February 15, 2002), 67 FR 8567, 8568 n. 7 (February 25, 2002) (SR-NYSE-2001-43) (“Release No. 45454”) (order approving approved person of a specialist to act as a specialist or primary market maker with respect to an option on a stock in which the NYSE specialist is registered on the Exchange).

<sup>11</sup> “Integrated market making” refers to the practice of the same person or firm making markets in an equity security and its related option. See Release No. 45454, 67 FR at 8568 n. 7.

related options.<sup>12</sup> The test for whether a product is “broad-based”, and therefore is not readily susceptible to manipulation, is whether the individual components of the ETP are sufficiently liquid and well-capitalized and the product is not over-concentrated.<sup>13</sup> When an ETP meets both criteria, and therefore can be considered “broad-based,” the Commission has explicitly permitted integrated market making and side-by-side trading in both the ETP and related options, with no requirement for information barriers or physical or organizational separation.<sup>14</sup>

In making a determination of whether an ETP is broad-based, the Commission has relied on an exchange’s listing standards. For instance, in permitting integrated market making and side-by-side trading for two types of ETPs and their related options, the Commission looked to

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<sup>12</sup> See Release No. 46213, 67 FR at 48232 (approving side-by-side trading and integrated market making for certain Exchange Traded Funds (“ETF”) and Trust Issued Receipts (“TIR”) and related options); see also Securities Exchange Act Release No. 62479 (July 9, 2010), 75 FR 41264 (July 15, 2010) (SR-Amex-2010-31) (“Release No. 62479”) (order approving side-by-side trading and integrated market making in the QQQ ETF and certain of its component securities where the QQQs met the composition and concentration measures to be classified as a broad-based ETF).

<sup>13</sup> See Release No. 62479, id., 75 FR at 41272. The Commission has expressed its belief “that, when the securities underlying an ETF consist of a number of liquid and well-capitalized stocks, the likelihood that a market participant will be able to manipulate the price of the ETF is reduced.” See id. See generally Securities Exchange Act Release Nos. 56633 (October 9, 2007), 72 FR 58696 (October 16, 2007) (SR-ISE-2007-60) (order approving generic listing standards for ETFs based on both U.S. and international indices, noting they are “sufficiently broad-based in scope to minimize potential manipulation.”); 55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR-NYSEArca-2006-86) (same); 54739 (November 9, 2006), 71 FR 66993 (November 17, 2006) (SR-Amex-2006-78) (same); 57365 (February 21, 2008), 73 FR 10839 (February 28, 2008) (SR-CBOE-2007-109) (order approving generic listing standards for ETFs based on international indices, noting they are “sufficiently broad-based in scope to minimize potential manipulation.”); 56049 (July 11, 2007), 72 FR 39121 (July 17, 2007) (SR-Phlx-2007-20) (same); 55113 (January 17, 2007), 72 FR 3179 (January 24, 2007) (SR-NYSE-2006-101) (same); and 55269 (February 9, 2007), 72 FR 7490 (February 15, 2007) (SR-Nasdaq-2006-50) (same).

<sup>14</sup> See note 12, supra.

the American Stock Exchange LLC's listing standards that, as described below, are very similar to the Exchange's current listing standards.

Specifically, the Commission observed that the ETPs at issue, an ETF and a TIR, were securities based on "groups of stocks" whose prices were based on the prices of their component securities. As such, the Commission was of the view that a market participant's ability to manipulate the price of ETPs or the related options would be "limited."<sup>15</sup> Moreover, the Commission noted that the listing standards required (1) each product to have a minimum of 13 securities in the underlying portfolio, (2) that the most heavily weighted component securities could not exceed 25% of the weight of the portfolio, and (3) that the five most heavily weighted component securities could not exceed 65% of the weight of the portfolio. As the Commission concluded,

[b]y limiting the proposal to broad-based ETFs and TIRs, concerns regarding informational advantages about individual securities are lessened.<sup>16</sup>

Finally, the Commission noted that the capitalization and liquidity requirements imposed by the listing standards -- for example, the component securities that in the aggregate account for at least 90% of the weight of the portfolio must have a minimum market value of at least \$75 million and the component securities representing 90% of the weight of the portfolio each must have a minimum trading volume during each of the last six month of at least 250,000 shares -- "should reduce the likelihood that any market participant has an unfair information advantage about the ETF, TIR, its related options, or its component securities, or that a market participant

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<sup>15</sup> Release No. 46213, 67 FR at 48235.

<sup>16</sup> Id.

would not be able to manipulate the prices of the ETFs, TIRs, or their related options.”<sup>17</sup> The Exchange believes that the same conclusions are warranted here for all ETPs with underlying NMS Stock components listed under the Exchange’s generic listing standards.

The Exchange notes that the relationship between an ETP and its underlying listed NMS Stock component or components is fundamentally different than that between an ETP and its related option. In the latter case, a small move in the price of the listed security can trigger a large move in the price of the related option, increasing the incentive for a market maker or specialist to manipulate the security or coordinate trading with the options market maker or specialist. Here, there is no similar outsized correlation between a move in the price of a listed ETP and one or more of its underlying NMS Stock components. Indeed, as discussed below, the potential for manipulation or coordinated trading is significantly attenuated for listed ETPs and their underlying NMS Stock components because the Exchange’s generic listed standards are designed to ensure that the Exchange will only list ETPs that are “broad-based” -- that is, the ETP’s underlying component securities must be sufficiently liquid and well-capitalized, and the ETP must not be unduly concentrated.

As set forth in Supplementary Material .01 of Rule 5.2(j)(3), the index components for investment company units (“Units”) consisting solely of US Component Stocks<sup>18</sup> or US Component Stocks and cash must meet the following criteria initially and on a continuing basis:

- Component stocks (excluding Units and securities defined in Section 2 of Rule 8P) that in the aggregate account for at least 90% of the equity weight of the

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<sup>17</sup> Id.

<sup>18</sup> The term “US Component Stock” means an equity security that is registered under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934 or an American Depositary Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934. See Rule 5.2(j)(3).

portfolio (excluding Units and securities defined in Section 2 of Rule 8P) each must have a minimum market value of at least \$75 million;<sup>19</sup>

- Component stocks (excluding Units and securities defined in Section 2 of Rule 8P) that in the aggregate account for at least 70% of the equity weight of the portfolio (excluding Units and securities defined in Section 2 of Rule 8P) each must have a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of \$25,000,000, averaged over the last six months;<sup>20</sup>
- The most heavily weighted component stock (excluding Units and securities defined in Section 2 of Rule 8P) cannot exceed 30% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted component stocks (excluding Units and securities defined in Section 2 of Rule 8P) cannot exceed 65% of the equity weight of the portfolio;<sup>21</sup>
- Where the equity portion of the portfolio does not include Non-US Component Stocks,<sup>22</sup> the equity portion of the portfolio must include a minimum of 13 component stocks;<sup>23</sup> and

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<sup>19</sup> See Rule 5.2(j)(3), Supp. Material .01(a)(A)(1).

<sup>20</sup> See id. at (a)(A)(2).

<sup>21</sup> See id. at (a)(A)(3).

<sup>22</sup> The term “Non-US Component Stock” means an equity security that is not registered under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934 and that is issued by an entity that (a) is not organized, domiciled or incorporated in the United States, and (b) is an operating company (including Real Estate Investment Trusts (REITS) and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives). See Rule 5.2(j)(3).

<sup>23</sup> See id. at (a)(A)(4). There is no minimum number of component stocks if (a) one or more series of Units or Portfolio Depositary Receipts (as defined in Section 2 of Rule

- All securities in the index or portfolio will be US Component Stocks listed on a listed on a national securities exchange and be NMS Stocks as defined in Rule 6000 of Regulation NMS.<sup>24</sup>

The listing standards for Units based on an index of both US Component Stocks and Non-US Component Stocks;<sup>25</sup> Equity-Index Linked securities (commonly referred to as Exchange Traded Notes or “ETNs”);<sup>26</sup> Portfolio Depositary Receipts under Rule 8.100 with underlying component stocks consisting of an index or portfolio of US Component Stocks;<sup>27</sup> and actively managed funds under Rule 8.600<sup>28</sup> are all broadly similar. The Exchange could not list an ETP that does not meet these generic listing requirements without a proposed rule change being filed with the Commission.

By virtue of the numerous restrictions in the Exchange’s generic listing standards relating to market cap, trading volume, and diversity requirements, among others, that the underlying components must meet to list on the Exchange, the generic listing standards are, among other things,

intended to reduce the potential for manipulation by assuring that the ETP is sufficiently broad-based, and that the components of an index or portfolio underlying an ETP are adequately capitalized,

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8P) constitute, at least in part, components underlying a series of Managed Fund Shares, or (b) one or more series of such ETPs account for 100% of the US Component Stocks portion of the weight of the index or portfolio. See id.

<sup>24</sup> See id. at (a)(A)(5).

<sup>25</sup> See Rule 5.2(j)(3), Supp. Material .01(a)(B)(1)-(5). The index or portfolio must include a minimum of 20 component stocks

<sup>26</sup> See Rule 5.2(j)(6)(B)(I).

<sup>27</sup> See Rule 8.100.

<sup>28</sup> See Rule 8.600.

sufficiently liquid, and that no one stock dominates the index.<sup>29</sup>

The Exchange believes that listed ETPs meeting these composition and concentration measures would be sufficiently broad-based to allow integrated market making and side-by-side trading in both the ETP and the component NMS securities with no requirement for information barriers or physical or organizational separation.

As noted, equity-based ETPs that do not meet the applicable generic listing standards would require a rule filing with the Commission prior to commencement of Exchange listing or trading. The rule filing would set forth the initial and continued listing requirements in order for such a product to be listed and traded on the Exchange. In order for a rule proposal to be consistent with the Act, it must, among other things, further the objectives of Section 6(b)(5) of the Act<sup>30</sup> in that it is designed to prevent fraudulent and manipulative acts and practices. The Exchange believes that equity-based ETPs whose underlying component composition varies greatly from the generic listing standards, i.e., an ETP whose components are insufficiently liquid or well-capitalized or unduly concentrated, would be unlikely to meet this requirement.<sup>31</sup>

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<sup>29</sup> See Securities Exchange Act Release No. 80189 (March 9, 2017), 82 FR 13889, 13892 (March 15, 2017) (SR-NYSEArca-2017-01) (order approving amendment of NYSE Arca, Inc. (“NYSE Arca”) Rule 5 and 8 Series to add specific continued listing standards for ETPs and to specify the delisting procedures for these products). See generally *id.* n. 28 & authorities cited therein.

<sup>30</sup> 15 U.S.C. 78f(b)(5).

<sup>31</sup> For examples of equity-based ETPs that did not meet the generic listing standards on the Exchange’s affiliate NYSE Arca and for which a rule filing was required, see, e.g., Securities Exchange Act Release No. 56987 (December 18, 2007), 72 FR 73397 (December 27, 2007) (SR-NYSEArca-2007-119) (proposal to list and trade the BearLinxSM Alerian master limited partnership (“MLP”) Select Index ETNs linked to the performance of the Alerian MLP Select Index); Securities Exchange Act Release No. 58437 (August 28, 2008), 73 FR 51684 (September 4, 2008) (SR-NYSEArca-2008-77) (proposal to list and trade shares of the Barclays Middle East Equities (MSCI GCC) Non Exchange Traded Notes Due 2038, which are linked to the MSCI Gulf Cooperation Council (GCC) Countries ex-Saudi Arabia Net Total Return Index, and index comprised

Accordingly, the Exchange believes that ETPs listed and traded via the rule filing process would also be sufficiently broad-based in order to minimize potential manipulation, thus justifying integrated market making and side-by-side trading in both the ETP and the component NMS securities.

While the “broad-based” nature of listed ETPs under either the generic listing standards or via a rule filing makes manipulation less likely, the Exchange also believes that the potential for manipulation of listed ETPs is minimal because ETP pricing is based on an “arbitrage function” performed by market participants that affects the supply of and demand for ETP shares and, thus, ETP prices. This “arbitrage function” is effectuated by creating new ETP shares and redeeming existing ETP shares based on investor demand; thus, ETP supply is open-ended. As the Commission has acknowledged, the arbitrage function helps to keep an ETP’s price in line with the value of its underlying portfolio, i.e., it minimizes deviation from NAV.<sup>32</sup> Generally,

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of all of the equity securities included in the five individual Middle Eastern country indices); Securities Exchange Act Release No. 57320 (February 13, 2008), 73 FR 9395 (February 20, 2008) (SR-NYSEArca-2008-15) (proposal to continue to list and trade the iShares MSCI Mexico Index Fund that corresponds to the price and yield performance of publicly traded securities in the aggregate in the Mexican market as represented by the MSCI Mexico Investable Market Index); Securities Exchange Act Release No. 60137 (June 18, 2009), 74 FR 30340 (June 25, 2009) (SR-NYSEArca-2009-54) (proposal to list and trade the iShares MSCI All Peru Capped Index Fund that corresponds to the MSCI All Peru Capped Index, which measures the performance of the “Broad Peru Equity Universe” which includes Peruvian equity securities classified in Peru according to the MSCI Global Investable Market Indices Methodology and securities of companies headquartered in Peru and that have the majority of their operations based in Peru).

<sup>32</sup> See Securities Exchange Act Release No. 75165, 80 FR 34729, 34733 (June 17, 2015) (S7-11-15) (arbitrage “generally helps to prevent the market price of ETP Securities from diverging significantly from the value of the ETP’s underlying or reference assets”). See also generally id., 80 FR at 34739 (“In the Commission’s experience, the deviation between the daily closing price of ETP Securities and their NAV, averaged across broad categories of ETP investment strategies and over time periods of several months, has

the higher the liquidity and trading volume of an ETP, the more likely the ETP's price will not deviate from the value of its underlying portfolio. Market makers registered in ETPs play a key role in this arbitrage function and DMMs, along with other market participants, would perform this role for ETPs listed on the Exchange. In short, the Exchange believes that the arbitrage mechanism is an effective and efficient means of ensuring that intraday pricing in ETPs closely tracks the value of the underlying portfolio or reference assets.<sup>33</sup>

The Exchange believes that the price regulating function played by the arbitrage mechanism renders attempts to influence or manipulate the price of an ETP more difficult and more susceptible to immediate detection and correction. The fact that an ETP and one or more of its underlying components are traded in the same physical space on the Exchange or by the same DMM on the Exchange does not alter this dynamic in the slightest, nor does it make price manipulation more likely. Rather, the Exchange believes the arbitrage mechanism would make price manipulation more difficult and, thus, less likely. Attempts by Floor-based market participants to influence the price of an ETP by, for instance, manipulating or [sic] one or more of component securities would be reflected in the deviation of the price from the NAV just as similar attempts today by upstairs traders would be reflected in the deviation of the price from the NAV. Moreover, a broad-based ETP would, as shown above, be even less susceptible to price manipulation. The Exchange thus believes that the type of broad-based equity ETPs eligible for listing under the generic listing standards, coupled with the arbitrage mechanism, sufficiently minimize the potential for manipulation of ETPs listed and traded on the Trading Floor.

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been relatively small[,]” although it had been “somewhat higher” in the case of ETPs based on international indices.).

<sup>33</sup> See Securities Exchange Act Release No. 87056, supra note 8.

With respect to integrated market making, the Commission has approved changes to Rule 98 that permit a DMM unit to engage in integrated market making with off-Floor market making units in related products.<sup>34</sup> Rule 98(c)(6) prohibits DMM units from operating as a specialist or market maker on the Exchange in related products, unless specifically permitted in Exchange rules. Rule 98(b)(7) defines “related products” as “any derivative instrument that is related to a DMM security.”<sup>35</sup> Accordingly, consistent with the proposal, the Exchange proposes to amend Rule 98(b)(7) to specifically exclude ETPs from the definition of “related products.” As discussed above, the Exchange believes that ETPs are different from other types of related products such as single-stock options or futures and that, given the broad-based nature of listed ETPs, integrated market making and side-by-side trading in both the ETP and underlying NMS stock components is appropriate with no requirement for information barriers or physical or organizational separation.

Finally, trading on the Exchange is subject to a comprehensive regulatory program that includes a suite of surveillances and routine examinations that review trading by DMMs and other market participants on the Exchange’s trading Floor. Market participants on the trading Floor, including DMMs, are also required to implement policies and procedures reasonably

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<sup>34</sup> See Securities Exchange Act Release No. 58328 (August 7, 2008), 73 FR 48260 (August 18, 2008) (SR-NYSE-2008-45) (order approving amendments to Rule 98 that permit specialist firms to integrate with off-Floor trading desks that trade in “related products,” as that term is defined in Rule 98).

<sup>35</sup> Under Rule 98(b)(7), derivative instruments include options, warrants, hybrid securities, single-stock futures, security-based swap agreement, a forward contract, or “any other instrument that is exercisable into or whose price is based upon or derived from a security traded at the Exchange.”

designed to detect and deter inappropriate conduct and prevent the misuse of material, non-public information or disclosure of Floor-based non-public order information.<sup>36</sup>

For all of the reasons stated above, the proposal is therefore consistent with the requirements of the Act.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,<sup>37</sup> in general, and furthers the objectives of Sections 6(b)(5) of the Act,<sup>38</sup> 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 mechanisms 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 listing and trading ETPs that have a component NMS Stock or are based on, or represent an interest in, an underlying index or reference asset that includes an NMS stock listed on the Exchange would remove impediments to and perfect the mechanism of a free and open market and a national market system by facilitating the listing and trading a broader range of ETPs consistent with the Exchange's current structure to trade listed securities. The Exchange believes that removal of the current exclusion of listed ETPs with NMS Stock components and the exclusion of ETPs from the definition of related products

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<sup>36</sup> See, e.g., Rule 98(c)(3) (setting forth restrictions on trading for member organizations operating a DMM unit).

<sup>37</sup> 15 U.S.C. 78f(b).

<sup>38</sup> 15 U.S.C. 78f(b)(5).

would not be inconsistent with the public interest and the protection of investors because listed ETPs that include equity securities as components are subject to listing requirements - whether the generic listing standards or those approved by individual rule filing -- that are designed to ensure that underlying indices or portfolios are sufficiently broad-based and well-diversified to protect against manipulation. Moreover, the Exchange believes that potential manipulation of listed ETPs is also minimal because of ETPs reliance on an “arbitrage function” performed by market participants that influences the supply and demand of shares and, thus, trading prices relative to NAV. The Exchange believes that these safeguards would continue to serve to prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest from concerns that may be associated with integrated market making and any possible misuse of non-public information.

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

**B. Self-Regulatory Organization’s Statement on Burden on Competition**

In accordance with Section 6(b)(8) of the Act,<sup>39</sup> the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed change would promote competition by facilitating the listing and trading of a broader range of ETPs on the Exchange. The Exchange believes that the proposed rule change would facilitate the trading of Exchange-listed ETPs by DMMs on Pillar, which would enable the Exchange to further compete with unaffiliated exchange competitors that also list and trade ETPs. The proposed rule changes would also provide issuers with greater choice in potential listing venues for their ETP products

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<sup>39</sup> 15 U.S.C. 78f(b)(8).

to include an exchange model that includes a DMM assigned to their security and related benefits to an issuer as a result of the Exchange's high-touch trading model.

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

Within 45 days of the date of publication of this notice in the Federal Register or such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. by order approve or disapprove the proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be 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-2019-54 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-NYSE-2019-54. 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-2019-54 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>40</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>40</sup> 17 CFR 200.30-3(a)(12).