

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-82339; File No. SR-NYSEAMER-2017-37)

December 15, 2017

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend NYSE American Rule 8.700E to Add Futures and Swaps on the EURO STOXX 50 Volatility Index to the Financial Instruments that an Issue of Managed Trust Securities May Hold

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on December 6, 2017, NYSE American LLC (“Exchange” or “NYSE American”) 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 NYSE American Rule 8.700E to add EURO STOXX 50 Volatility Index (VSTOXX®) futures and swaps on VSTOXX to the financial instruments that an issue of Managed Trust Securities may hold. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it

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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.

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

NYSE American Rule 8.700E permits the trading of Managed Trust Securities either by listing or pursuant to unlisted trading privileges (“UTP”).<sup>3</sup> The Exchange proposes to amend NYSE American Rule 8.700E to add futures and swaps on the EURO STOXX 50 Volatility Index (“VSTOXX”) to the financial instruments in which an issue of Managed Trust Securities may hold long and/or short positions. (Futures on VSTOXX are referred to herein as “Futures Contracts.”)

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<sup>3</sup> The term “Managed Trust Securities” as used in the NYSE American Rules will, unless the context otherwise requires, mean a security that is registered under the Securities Act of 1933, as amended (15 U.S.C. 77a), and (i) is issued by a trust (“Trust”), or any series thereof, that (1) is a commodity pool as defined in the Commodity Exchange Act and regulations thereunder, is not registered or required to be registered as an investment company under the Investment Company Act of 1940, as amended, and is managed by a commodity pool operator registered with the Commodity Futures Trading Commission, and (2) holds long and/or short positions in exchange-traded futures contracts and/or certain currency forward contracts and/or swaps selected by the Trust’s advisor consistent with the Trust’s investment objectives, which will only include exchange-traded futures contracts involving commodities, commodity indices, currencies, currency indices, stock indices, fixed income indices, interest rates and sovereign, private and mortgage or asset backed debt instruments, and/or forward contracts on specified currencies, and/or swaps on stock indices, fixed income indices, commodity indices, commodities, currencies, currency indices, or interest rates, each as disclosed in the Trust’s prospectus as such may be amended from time to time, and cash and cash equivalents; and (ii) is issued and redeemed continuously in specified aggregate amounts at the next applicable net asset value. See NYSE American Rule 8.700E(c).

The Exchange proposes to amend NYSE American Rule 8.700E(c)(1) to add Futures Contracts and swaps on VSTOXX to the financial instruments in which an issue of Managed Trust Securities may hold long and/or short positions.<sup>4</sup>

The VSTOXX is based on EURO STOXX 50 Index (“Index”) real-time option prices that are listed on the Eurex Exchange (“Eurex”) and are designed to reflect the market expectations of near-term up to long-term volatility by measuring the square root of the implied variances across all options of a given time to expiration.<sup>5</sup> The Index includes 50 stocks that are among the largest free-float market capitalization stocks from 11 Eurozone countries.<sup>6</sup> Futures Contracts are cash settled and trade between the hours of 7:30 a.m. and 10:30 p.m. Central European Time (“CET”) (2:30 a.m. and 5:30 p.m. Eastern Time). The Futures Contract value is 100 Euros per index point of the underlying and it is traded to two decimal places with a minimum price change of 0.05 points (equivalent to a value of 5 Euros). The daily settlement price is determined during the closing auction of the respective Futures Contract. The last trading day and final settlement day is 30 calendar days prior to the third Friday of the expiration month of the underlying options, which is usually the Wednesday prior to the second to last Friday of the respective maturity month. Information regarding the VSTOXX and the Futures

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<sup>4</sup> The Commission has approved amendments to NYSE Arca Rule 8.700-E that are substantially identical to those proposed herein. See Securities Exchange Act Release No. 82066 (November 13, 2017), 82 FR 54434 (November 17, 2017) (SR-NYSEArca-2017-85) (order approving proposed rule change to amend NYSE Arca Rule 8.700-E and to list and trade shares of the ProShares European Volatility Futures ETF).

<sup>5</sup> The VSTOXX is a non-investable index that seeks to measure the volatility of the Index over a future time horizon as implied by the price of option contracts on the Index available on the Eurex. The VSTOXX does not measure the actual volatility of the Index. The Futures Contracts are denominated in Euros and are traded exclusively on the Eurex.

<sup>6</sup> These countries include Austria, Belgium, Finland, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Portugal and Spain.

Contracts can be found on the STOXX Limited (“STOXX”) website and the Eurex website, respectively.<sup>7</sup>

STOXX computes the Index on a real-time basis throughout each trading day, from 8:50 a.m. until 5:30 CET (3:50 a.m. until 12:30 p.m. Eastern Time). VSTOXX levels will be calculated by STOXX and widely disseminated by major market data vendors on a real-time basis throughout each trading day.

The Exchange believes that the proposed amendment to add Futures Contracts and swaps on VSTOXX to the financial instruments in which an issue of Managed Trust Securities may hold long and/or short positions will provide investors with the ability to better diversify and hedge their portfolios using an exchange traded security without having to trade directly in the underlying Futures Contracts, and will facilitate the listing and trading on the Exchange of additional Managed Trust Securities that will enhance competition among market participants, to the benefit of investors and the marketplace.

The Exchange believes that its surveillance procedures are adequate to continue to properly monitor the trading of Managed Trust Securities that hold Futures Contracts and swaps on VSTOXX in all trading sessions and to deter and detect violations of Exchange rules.

The Exchange notes that the proposed change is not otherwise intended to address any other issues and that the Exchange is not aware of any problems that ETP Holders or issuers would have in complying with the proposed change.

## 2. Statutory Basis

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<sup>7</sup> Eurex is a member of the ISG and, as such, the Exchange may obtain information regarding trading in the Futures Contracts. For a list of the current members and affiliate members of ISG, see [www.isgportal.com](http://www.isgportal.com).

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>9</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed change would facilitate the listing and trading of additional types of Managed Trust Securities, which would enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because the Managed Trust Securities would continue to be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Rule 8.700E. The proposed amendments to NYSE American Rule 8.700E relating to Managed Trust Securities are substantially identical to amendments to NYSE Arca Rule 8.700E previously approved by the Commission.<sup>10</sup>

The Exchange has in place surveillance procedures that are adequate to properly monitor trading in Managed Trust Securities in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. All Managed Trust Securities traded pursuant to NYSE American Rule 8.700E are included within the definition of “security” or “securities” as such terms are used in the Exchange rules and, as such, are subject to Exchange rules and procedures that currently govern the trading of securities on the Exchange. Trading in the securities will be halted under the conditions specified in NYSE American Rule 8.700E(e)(2)(D).

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> See note 4, supra.

For these 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>11</sup> 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 will encourage competition by enabling additional types of Managed Trust Securities to be traded on the Exchange.

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 Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup> Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest, (ii) impose any significant burden on competition, and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup>

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<sup>11</sup> 15 U.S.C. 78f(b)(8).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</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.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. As noted above, the proposed amendments to NYSE American Rule 8.700E relating to Managed Trust Securities are substantially identical to amendments to NYSE Arca Rule 8.700E previously approved by the Commission. The proposal raises no new or novel issues. Therefore, the Commission designates the proposed rule change to be operative upon filing.<sup>16</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### 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-NYSEMER-2017-37 on the subject line.

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<sup>16</sup> For purposes only of waiving the 30-day operative delay, the Commission has 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 Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEAMER-2017-37. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that

you wish to make available publicly. All submissions should refer to File Number SR-NYSEAMER-2017-37 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>17</sup>

Robert W. Errett  
Deputy Secretary

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