

described above, in a manner consistent with the February 19, 2020 Exemption Request, including each of the representations made in the February 19, 2020 Exemption Request, as modified by the discussion in Section IV of this Order. As noted above, the Participants have represented in their February 19, 2020 Exemption Request that the full scope of CAT Data required under the CAT NMS Plan will be available when all five phases of Phased Reporting are complete, subject to any applicable exemptive relief or amendments to the CAT NMS Plan.¹¹⁴

Accordingly, *it is hereby ordered*, pursuant to Section 36 of the Exchange Act¹¹⁵ and Rule 608(e) of Regulation NMS,¹¹⁶ that the Commission grants the Participants' request for exemptive relief, as set forth in the February 19, 2020 Exemption Request from the requirements in Sections 6.4, 6.7(a)(v) and 6.7(a)(vi) of the CAT NMS Plan related to Industry Member reporting of Industry Member Data to the Central Repository to allow for the implementation of Phased Reporting, subject to the conditions described above.

By the Commission.

Vanessa A. Countryman,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88700; File No. SR-NYSE-2020-01]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend the NYSE Rule 6800 Series, the Exchange's Compliance Rule Regarding the National Market System Plan Governing the Consolidated Audit Trail

April 20, 2020.

I. Introduction

On January 3, 2020, New York Stock Exchange LLC ("NYSE" or "the Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the Exchange's compliance rules regarding the National Market System Plan Governing the Consolidated Audit Trail ("CAT NMS Plan").³ The proposed rule change was published for comment in the **Federal Register** on January 23, 2020.⁴ On March 5, 2020, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change, to April 22, 2020.⁵ The Commission received no comments on the proposal. This order institutes proceedings pursuant to Exchange Act Section 19(b)(2)(B) to determine whether to approve or disapprove File No. SR-NYSE-2020-01.⁶

II. Description of the Proposed Rule Change

The Exchange proposes to amend the NYSE Rule 6800 Series ("Compliance Rule"), which sets forth rules regarding Industry Member⁷ compliance with the CAT NMS Plan. Specifically, the proposed rule change would make the following changes to the Compliance Rule to be consistent with certain proposed amendments to and exemption requests submitted by the Participants⁸ of the CAT NMS Plan: (1) Revise data reporting requirements for the Firm Designated ID⁹ based on a

proposed amendment to the CAT NMS Plan filed with the Commission;¹⁰ (2) amend the dates for required testing and reporting in the Compliance Rule for Industry Member reporting;¹¹ (3) amend the rules to require Industry Members to submit trade reports for executions and cancellations for cancelled trades to the FINRA's Trade Reporting Facilities, FINRA's OTC Reporting Facility or FINRA's Alternative Display Facility;¹² (4) revise the timestamp granularity requirement to require Industry Members with order handling or execution systems that utilize time stamps in increments finer than milliseconds to report timestamps up to nanoseconds when reporting Industry Member data¹³ to the Central

Member; provided, however, such identifier may not be the account number for such trading account if the trading account is not a proprietary account. See proposed NYSE Rule 6810(r).

¹⁰ See Notice, *supra* note 4, at 3964. See also Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair re: Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail (April 14, 2020). The Commission has not approved or disapproved the changes proposed in this amendment.

¹¹ See Notice, *supra* note 4, at 3967-72. On February 19, 2020, the Participants submitted a request for exemptive relief from the reporting dates required by the CAT NMS Plan. See Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Industry Member Reporting Dates (Feb. 19, 2020).

¹² See Notice, *supra* note 4, at 3972. On February 12, 2020, the Participants submitted a request for exemptive relief from the requirement in Sections 6.4(d)(ii)(A)(2) and (B) of the CAT NMS Plan to require Industry Members to record and report, if an order is executed, the SRO-Assigned Market Participant Identifier of the clearing broker, and if a trade is cancelled, the cancelled trade indicator. See Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to FINRA Facility Data Linkage (Feb. 12, 2020). If granted, the exemptive relief would revise CAT reporting requirements regarding cancelled trades and SRO-Assigned Market Participant Identifiers of clearing brokers, if applicable, in connection with order executions, as such information would be available from FINRA's trade reports submitted to CAT.

¹³ See Notice, *supra* note 4, at 3972-73. On February 3, 2020, the Participants filed a request for exemptive relief from the current CAT NMS Plan requirement to record and report Industry Member Data with time stamps consistent with their system, a requirement from which the Exchange requests an exemption. See Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Granularity of Timestamps and Relationship Identifiers (Feb. 3, 2020). On April 8, 2020, the Commission granted the exemptive relief for timestamp granularity. See Securities Exchange Act Release No. 88608 (April 8, 2020), 85 FR 20743 (April 14, 2020).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The CAT NMS Plan was approved by the Commission, as modified, on November 15, 2016. See Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016).

⁴ See Securities Exchange Act Release No. 87990 (January 16, 2020), 85 FR 3963 ("Notice").

⁵ See Securities Exchange Act Release No. 88329, 85 FR 14265 (March 11, 2020).

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ Industry Member means a member of a national securities exchange or a member of a national securities association. See CAT NMS Plan, *supra* note 3, at Section 1.1. See also proposed NYSE Rule 6810(s).

⁸ The Participants include BOX Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors' Exchange LLC, Long-Term Stock Exchange, Inc., Miami International Securities Exchange LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.

⁹ As proposed, "Firm Designated ID" would mean a unique and persistent identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository, where each such identifier is unique among all identifiers from any given Industry

¹¹⁴ See February 19, 2020 Exemption Request at 2.

¹¹⁵ 15 U.S.C. 78mm(a)(1).

¹¹⁶ 17 CFR 242.608(e).

Repository;¹⁴ (5) revise the reporting requirements for circumstances in which an Industry Member uses an established trading relationship for an individual Customer, instead of an account, on the order reported to CAT;¹⁵ and (6) revise the CAT reporting requirements so Industry Members would not be required to report to the Central Repository dates of birth, social security numbers, or account numbers for individuals.¹⁶

The Exchange also proposes to amend the Exchange's Compliance Rule to facilitate the retirement of certain existing regulatory systems, specifically the Financial Industry Regulatory Authority, Inc.'s ("FINRA") Order Audit Trail System, by adding additional data elements to the CAT reporting requirements for Industry Members,¹⁷ additional reporting requirements for alternative trading systems,¹⁸ and additional data elements related to OTC Equity Securities¹⁹ that FINRA

currently receives from alternative trading systems that trade OTC Equity Securities.²⁰

III. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act²¹ to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,²² the Commission is providing notice of the grounds for possible disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act,²³ which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade," and "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."²⁴ The Commission believes that several of the proposed rule changes are not consistent with the CAT NMS Plan or exemptive relief that has been granted as of the date of this Order.

IV. Commission's Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5)²⁵ or any other provision of the Act, or the rules and regulations thereunder. Although there do not

association's equity trade reporting facilities. See CAT NMS Plan, *supra* note 3, at Section 1.1.

²⁰ *Id.* at 3967.

²¹ 15 U.S.C. 78s(b)(2)(B).

²² 15 U.S.C. 78s(b)(2)(B).

²³ 15 U.S.C. 78f(b)(5).

²⁴ 15 U.S.C. 78f(b)(5).

²⁵ 15 U.S.C. 78f(b)(5).

appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4 under the Act,²⁶ any request for an opportunity to make an oral presentation.²⁷

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by May 15, 2020. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by May 29, 2020. 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 email to rule-comments@sec.gov. Please include File Numbers SR-NYSE-2020-01 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-2020-01. This file number should be included on the subject line if email 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

²⁶ 17 CFR 240.19b-4.

²⁷ Section 19(b)(2) of the Exchange Act, as amended by the Securities Act Amendments of 1975, Public Law 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

¹⁴ The Central Repository, as defined in the CAT NMS Plan, means "the repository responsible for the receipt, consolidation, and retention of all information reported to the CAT pursuant to SEC Rule 613 and this Agreement." See CAT NMS Plan, *supra* note 3, at Section 1.1.

¹⁵ See Notice, *supra* note 4, at 3973. On February 3, 2020, the Participants filed a request for exemptive relief from the CAT NMS Plan requirement that Participants, through their Compliance Rules, require Industry Members to record and report to the Central Repository the account number, the date account opened, and the account type for individual customers in circumstances in which an Industry Member uses an established trading relationship for the individual customer. Instead, the Participant would require Industry Members to record and report to the Central Repository for the original receipt or origination of an order: (i) The relationship identifier instead of the account number, (ii) the "account type" as a "relationship", and (3) the account effective date instead of the "date account opened." See Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Granularity of Timestamps and Relationship Identifiers (Feb. 3, 2020).

¹⁶ See Notice, *supra* note 4, at 3973. The Participants requested and have received exemptive relief from the requirement of Section 6.4(d)(ii)(C) of the CAT NMS Plan for the Participants, in their Compliance Rules, to require their members to provide dates of birth, account numbers and social security numbers for individuals to the CAT. See Securities Exchange Act Release No. 88393 (March 17, 2020), 85 FR 16152 (March 20, 2020). See also Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemptive Relief from Certain Provisions of the CAT NMS Plan related to Social Security Numbers, Dates of Birth and Account Numbers (Jan. 29, 2020).

¹⁷ See Notice, *supra* note 4, at 3965-67.

¹⁸ See Notice, *supra* note 4, at 3964-65.

¹⁹ OTC Equity Security, as defined in the CAT NMS Plan, means any equity security, other than an NMS Security, subject to prompt last sale reporting rules of a registered national securities association and reported to one of such

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–2020–01 and should be submitted on or before May 15, 2020. Rebuttal comments should be submitted by May 29, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88692; File No. SR–NYSENAT–2020–16]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 1.1 To Include Managed Portfolio Shares in the Definition of “UTP Exchange Traded Product”

April 20, 2020.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b–4 thereunder,³ notice is hereby given that on April 16, 2020, NYSE National, Inc. (“NYSE National” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 1.1 to include Managed Portfolio Shares in the definition of “UTP Exchange Traded Product.” The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and

at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes to amend Rule 1.1(m), which sets forth the meanings of “Exchange Traded Product” and “UTP Exchange Traded Product” as those terms are used in Exchange rules. Specifically, the Exchange proposes to amend the definition of “UTP Exchange Traded Product” to include Managed Portfolio Shares⁴ as an additional type of Exchange Traded Product (“ETP”) that may trade on the Exchange pursuant to unlisted trading privileges (“UTP”).

To effect this change, the Exchange proposes to add a bullet point listing “Managed Portfolio Shares” in Rule 1.1(m) to include them in the enumerated list of ETPs that may trade on the Exchange on a UTP basis. The Exchange also proposes a non-substantive grammatical change to accommodate the addition of “Managed Portfolio Shares” as the final item in the bulleted list in Rule 1.1(m).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁶ in particular, because it is designed to remove impediments to and perfect the mechanism of a free and

open market, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

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

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change would provide the public and investors with up-to-date information about the types of ETPs that can trade on the Exchange on a UTP basis and would promote competition by adding an additional type of ETP that may trade on the Exchange pursuant to UTP.

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

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

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

Because the 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 Act⁷ and Rule 19b–4(f)(6) thereunder.⁸

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change,

Continued

²⁸ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

⁴ Managed Portfolio Shares are shares of actively managed exchange-traded funds for which the portfolio is disclosed in accordance with standard mutual fund disclosure rules. See, e.g., Cboe BZX Exchange, Inc. (“BZX”) Rule 14.11(k). On April 2, 2020, BZX commenced trading its first securities listed under BZX Rule 14.11(k) (American Century Focused Dynamic Growth ETF (FDG) and American Century Focused Large Cap Value ETF (FLV)).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) & (5).