

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 MSRB. 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-MSRB-2018-05 and should be submitted on or before July 27, 2018.

For the Commission, pursuant to delegated authority.<sup>25</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83560; File No. SR-NYSE-2018-30]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Provide for the Listing of Exchange Traded Products With No Component NMS Stock Listed on the Exchange, Amend Its Rules Regarding Unlisted Trading Privileges, and Make Corresponding Changes

June 29, 2018.

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 June 15, 2018, New York Stock Exchange LLC ("NYSE" 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 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 to [sic] amend its rules to (1) provide for the listing of exchange traded products ("ETPs") that do not have any component NMS Stock<sup>4</sup> that is listed on the Exchange or that is based on, or represents an interest in, an underlying index or reference asset that includes an NMS Stock listed on the Exchange; (2) delete certain redundant listing rules that would be superseded by these initial and continued listing and trading requirements for the listing of ETPs; and (3) make changes to its unlisted trading privileges ("UTP") Rule 5.1(a)(2), as well as certain supplementary changes throughout Rules 5P and 8P, to conform to the rules of the Exchange's affiliate, NYSE National, Inc. ("NYSE National"). 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 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 its rules to provide for the listing of Exchange Traded Products ("ETPs") that do not have any component NMS Stock that is listed on the Exchange or that is based on, or represents an interest in, an underlying index or reference asset that includes an NMS Stock listed on the Exchange; (2) delete certain redundant listing rules that would be superseded by these initial and continued listing and trading requirements for the listing of ETPs; and (3) make changes to its unlisted trading privileges ("UTP") Rule 5.1(a)(2), as

well as certain supplementary changes throughout Rules 5P and 8P, to conform to the rules of the Exchange's affiliate, NYSE National, Inc. ("NYSE National").

###### Background

Currently, the Exchange trades ETPs on an UTP basis only pursuant to Rules 5P and 8P.<sup>5</sup> In the NYSE ETP Listing Rules Filing, the Exchange represented that Rules 5P and 8P would contain initial and continued listing and trading requirements for ETPs, but that they would apply only to the trading pursuant to UTP of ETPs on the Exchange.<sup>6</sup> Accordingly, the Exchange included preambles to both Rules 5P and 8P that provide that "the provisions of this Rule [5P/8P] shall apply to the trading pursuant to UTP of Exchange Traded Products on the Exchange. This Rule [5P/8P] shall not apply to the listing of Exchange Traded Products on the Exchange." Rule 5.1(a)(1), which was adopted in the NYSE ETP Listing Rules Filing, further provides that "the provisions of Rules 5P and 8P that permit the listing of Exchange Traded Products would not be effective until the Exchange files a proposed rule change to amend its rules to comply with Rules 10A-3 and 10C-1 under the Exchange Act and to incorporate qualitative listing criteria, and such proposed rule change is approved by the Commission." Because Rules 5P and 8P were designed to support the trading of ETPs on a UTP basis only, the Exchange did not change any of its rules relating to the listing of ETPs.

###### Proposed Rule Changes To Provide for Listing of Certain ETPs

The Exchange is proposing to list certain ETPs. Specifically, the Exchange proposes to list ETPs that meet the requirements of Rules 5P and 8P, provided such ETPs do not have any component NMS Stock that is listed on the Exchange or that is based on, or represents an interest in, an underlying index or reference asset that includes an

<sup>5</sup> See, Securities Exchange Act Release No. 80214 (March 10, 2017), 82 FR 14050 (March 16, 2017) (SR-NYSE-2016-44) (Approval Order) ("NYSE ETP Listing Rules Filing"). In connection with the Exchange's implementation of Pillar B and C securities, NYSE filed several additional rule changes. See Securities Exchange Act Release Nos. 76803 (December 30, 2015), 81 FR 536 (January 6, 2016) (SR-NYSE-2015-67) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change); 81225 (July 27, 2017), 82 FR 36033 (August 2, 2017) (SR-NYSE-2017-35) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change); and 82945 (March 26, 2018), 83 FR 13553 (March 29, 2018) (SR-NYSE-2017-36) (Approval Order) ("NYSE Trading Rules Filing").

<sup>6</sup> See *id.* NYSE ETP Listing Rules Filing.

<sup>25</sup> 17 CFR 200.30-3(a)(12).

<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.

<sup>4</sup> NMS Stock is defined in Rule 600 of Regulation NMS, 17 CFR 242.600(b)(47).

NMS Stock listed on the Exchange.<sup>7</sup> ETPs listed on the Exchange would be a “Tape A” listing and would be traded pursuant to the rules applicable to NYSE-listed securities. To allow the Exchange to list these ETPs, the Exchange proposes the changes described below.

To allow the listing of certain ETPs, the Exchange proposes to delete the preambles to Rules 5P and 8P, which currently state that the rules shall apply to the trading pursuant to UTP of ETPs only, and that the Rules shall not apply to the listing of ETPs on the Exchange. By deleting these preambles, the Exchange would be permitted to list ETPs that meet the initial and continued listing requirements in these Rules. Further, the Exchange proposes to add new preambles to Rules 5P and 8P that would state that the Exchange would not list any ETPs under either Rules 5P or 8P “that have any component NMS Stock that is listed on the Exchange or that is based on, or represents an interest in, an underlying index or reference asset that includes an NMS Stock listed on the Exchange.”

In addition, because the Exchange proposes to list certain ETPs, it proposes to add text to the preamble to Rules 1P–13P that provides that Rules 5P and 8P, and related definitions in Rule 1P, would be applicable to listing of ETPs on the Exchange.

The Exchange also proposes to amend Rule 5.1(a)(1), which is the Exchange’s general rule that allows the Exchange to extend UTP to any security that is an NMS Stock, as follows:

- First, the Exchange proposes to delete the following clause: “notwithstanding the requirements for listing set forth in the Rules.” This clause is no longer necessary because the Exchange is proposing to list securities under Rule 5P.<sup>8</sup>

- Second, because ETPs listed on the Exchange would not be traded on the Pillar platform at this time, the Exchange is proposing to delete the reference to “Pillar trading platform” and replace it with a reference to the “Exchange.” Accordingly, any security listed or traded pursuant to UTP under Rule 5P would be subject to all

Exchange trading rules applicable to securities trading on the Exchange.<sup>9</sup>

- Third, the Exchange proposes to delete the sentence in Rule 5.1(a)(1) that states that the Exchange may not list any ETPs.

Finally, the Exchange proposes to add the words “Unlisted Trading Privileges” to the title of Rule 5.1, to better describe the provisions in that rule.

#### Compliance With Rules 10A–3 and 10C–1 Under the Act

Rule 5.1(a)(1) currently includes a clause that states that the provisions of Rules 5P and 8P that permit the listing of Exchange Traded Products would not be effective until the Exchange files a proposed rule change to amend its rules to comply with Rules 10A–3 and 10C–1 under the Act and to incorporate qualitative listing criteria, and such proposed rule change is approved by the Commission. These Commission rules require exchanges to establish rules that require their listed companies’ audit and compensations committees meet specified standards.

The Exchange implemented the requirements of Rules 10A–3 and 10C–1 under the Act by adding Section 303A to the NYSE Listed Company Manual (“LCM”).<sup>10</sup> All NYSE-listed companies must comply with Section 303A, including any ETPs listed on the Exchange. Consistent with the requirements of the Sarbanes-Oxley Act of 2002 and Rules 10A–3 and 10C–1 of the Act, Section 303A does not apply to some listed companies.<sup>11</sup> The Commission found that Section 303A of the LCM was consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>12</sup> Accordingly, the Exchange is proposing to delete the last sentence of Rule 5.1(a)(1).

#### Deletion of Obsolete Listing Rules for ETPs

The Exchange also proposes to delete certain listing rules that would be superseded by the ETP listing and

<sup>9</sup> The Exchange also proposes to delete the reference to Pillar Platform in the title of these rules. As proposed, the title for these rules would be “Rules 1P–13P.”

<sup>10</sup> NYSE Listed Company Manual, <http://nysemanual.nyse.com/LCM/Sections/>.

<sup>11</sup> See Rule 10C–1(b)(5) under the Act allows national securities exchanges to exempt from the requirements of Rule 10C–1 certain categories of issuers, as the national securities exchange determines is appropriate, taking into consideration, among other relevant factors, the potential impact of such requirements on smaller reporting issuers.

<sup>12</sup> See Securities Exchange Act Release No. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (SR–NYSE–2002–33).

trading requirements in Rules 5P and 8P.

As discussed above, the Exchange is proposing today to list certain ETPs under Rules 5P and 8P. In connection with this proposed change, the Exchange is also proposing to delete certain ETP listing rules that are not currently used. Because the Exchange only intends to list ETPs under Rules 5P and 8P, it proposes to delete the following rules:

- Rule 414 (Index and Currency Warrants);
- Rule 1100 (Investment Company Units);
- Rules 1200–1202 (Trust Issued Receipts);
- Rules 1300–1301 (Gold Shares);
- Rules 1300A–1301A (Currency Trust Shares); and
- Rules 1300B–1301B (Commodity Trust Shares).
- LCM Section 703.15 (Foreign Currency Warrants and Currency Index Warrants);
- LCM Section 703.16 (Investment Company Units);
- LCM Section 703.17 (Stock Index Warrants Listing Standards);
- LCM Section 703.20 (Trust Issued Receipts);
- LCM Section 703.21 (Equity-Linked Debt Securities); and
- LCM Section 703.22 (Equity Index-Linked Securities, Commodity-Linked Securities and Currency-Linked Securities).

The Exchange is also proposing to make the following cross-reference changes to the rules of the Exchange to correspond to the above deletions:

- First, the Exchange proposes to amend cross-references in Supplementary Material .30 to Rule 36 because the initial and continued listing and trading standards and definitions for (1) Investment Company Units would now be described in Rule 5.2(j)(3), not in Section 703.16 of the LCM and (2) Trust Issued Receipts would now be described in Rule 8.200, not in Rule 1200. Therefore, in Supplementary Material .30 to Rule 36, the Exchange is proposing to change the cross-reference to Section 703.16 of the LCM to Rule 5.2(j)(3), and the cross-reference to Rule 1200 to Rule 8.200.

- Second, the Exchange proposes to amend Rule 1400(2)(c) to reflect the deletion of Section 703.21 of the LCM. Rule 1400(2)(c) states that Debt Securities<sup>13</sup> do not include securities

<sup>13</sup> As used in Rule 1400, the term “Debt Security” or “Debt Securities” means any unlisted note, bond, debenture or evidence of indebtedness that is:

(1) Statutorily exempt from the registration requirements of Section 12(b) of the Act, or

<sup>7</sup> The Exchange’s proposed rules for these products are substantially identical (other than with certain non-substantive and technical amendments) as the rules of NYSE Arca, Inc. (“NYSE Arca”) and the Exchange’s other affiliates, for the qualification, listing and trading of such products. See NYSE ETP Listing Rules Filing, *supra* note 5.

<sup>8</sup> The rules of other exchanges that list ETPs do not contain such a clause. See, e.g., NYSE Arca Rule 5.1–E(a) and Nasdaq Stock Market LLC Rule 5740.

that, if listed on the Exchange, would have been listed under Section 703.21 of the LCM (Equity-Linked Debt Securities). Since the Exchange is proposing to delete this section from the LCM, it is also proposing to delete all cross-references to it in Rule 1400(2)(c). Further, to account for the deletion of references to Section 703.21 of the LCM, which pertains to equity-linked debt securities, the Exchange proposes to clarify in Rule 1400(2)(c) that Debt Securities do not include equity-linked debt securities listed under Rule 5P.

• Third, for the avoidance of doubt, the Exchange is also proposing to include the following introductory preamble language at the beginning of Section 7 of the LCM, which pertains to Listing Applications and currently includes the relevant ETP listing rules of the manual that the Exchange is proposing to delete:

“See Exchange Rules 5P and 8P for the initial and continued listing and trading requirements for Exchange Traded Products (as defined in Rule 1.1(bbb)).”<sup>14</sup>

#### Certain Changes To Conform Rules 5P and 8P to the Rules of NYSE National

To conform the Exchange’s rules to that of its affiliate, NYSE National,<sup>15</sup> the Exchange is proposing to delete all of the references in Rules 5P and 8P that would imply that the initial and continued listing standards contained in Rules 5P and 8P may apply to the trading pursuant to UTP of such ETPs. In the National Rule Filing, NYSE National stated that it does not believe that it is necessary for an exchange that trades securities on a UTP basis to have listing rules for ETPs.<sup>16</sup> Accordingly, the Exchange proposes that clauses in Rules 5P and 8P that would make the initial and continued listing standards contained in such rules apply not only to the listing of such ETPs, but also to the trading of such ETPs pursuant to UTP (such as the clause “whether by listing or pursuant to unlisted trading privileges” when referencing that such rule would apply to the listing of the

relevant ETP or the trading pursuant to UTP of such ETP), be deleted. In conjunction therewith, the Exchange proposes to include the words “listing and” before the word “trading” in each of the rules from which such clauses are deleted, so as to clarify that the rules would apply to the listing and trading of such relevant ETP on the Exchange once that ETP is listed on the Exchange.

In addition, consistent with rules approved for NYSE National in the NYSE National Rule Filing, the Exchange is proposing to delete Rule 5.1(a)(2)(A), which currently requires the Exchange to file with the Commission a Form 19b-4(e) with respect to each UTP Exchange Traded Product within five business days after commencement of trading.<sup>17</sup> To account for this deleted sub-paragraph, the Exchange is also proposing to re-number each of the sub-paragraphs in Rule 5.1(a)(2).

The Exchange believes that it is unnecessary for an exchange to apply initial and continued listing rules to ETPs it trades pursuant to UTP. To the extent ETP listing rules include initial and continued listing standards, the Exchange would not be in a position to evaluate issuer compliance with such rules. Because the Exchange would not be in a position to enforce any ETP listing rules, the Exchange does not believe it is necessary to have such rules. Similarly, the Exchange does not believe it is necessary for a non-listing venue to file a Form 19b-4(e) if it begins trading an ETP on a UTP basis. Rule 19b-4(e)(1) under the Act refers to the “listing and trading” of a “new derivative securities product.”<sup>18</sup> The Exchange therefore believes that the requirements of that rule refer to when an exchange lists and trades an ETP, and not when an exchange seeks to trade such product on a UTP basis pursuant to Rule 12f-2 under the Act.<sup>19</sup>

Finally, the Exchange proposes to amend Rule 5.1(a)(2)(D) to conform to the comparable NYSE National rule. Both NYSE National’s and the Exchange’s rules pertaining to trading halts are in Rule 7.18. Like NYSE National, the Exchange proposes to halt trading in a UTP Exchange Traded Product as provided for in Rule 7.18. Accordingly, the Exchange proposes to delete the rule text in paragraph (D) of Rule 5.1(a)(2) that is duplicative of trading halt authority in Rule 7.18. The Exchange also proposes to add a cross reference stating that the Exchange

would halt trading in a UTP ETP as provided for in Rule 7.18.<sup>20</sup>

#### Listing ETPs on the Exchange & Surveillance

The Exchange represents that listed ETPs would be subject to the existing trading surveillances administered by the Exchange for ETPs trading UTP, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor the Exchange’s listing and trading of ETPs in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.<sup>21</sup>

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of relevant parties for relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in ETPs, as well as certain other securities and financial instruments underlying such ETPs, with other markets and other entities that are members of the Intermarket Surveillance Group (“ISG”). The Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in ETPs and financial instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in ETPs, as well as certain other securities and financial instruments underlying such ETPs from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement (“CSSA”).

Further, the Exchange’s affiliate, NYSE Arca, currently lists ETPs pursuant to rules that are substantially

(2) eligible to be traded absent registration under Section 12(b) of the Act pursuant to the order granted by the Securities and Exchange Commission in Exchange Act Release Number 34-54766 (November 16, 2006) (the “2006 Order”).

<sup>14</sup> Rule 1.1(bbb) defines the term “Exchange Traded Product” to mean a security that meets the definition of “derivative securities product” in Rule 19b-4(e) under the Securities Exchange Act of 1934 and a “UTP Exchange Traded Product to mean an Exchange Traded Product that trades on the Exchange pursuant to unlisted trading privileges.

<sup>15</sup> See, Securities Exchange Act Release No. 83289 (May 17, 2018), 83 FR 23968 (May 23, 2018) (SR-NYSENat-2018-02) (the “NYSE National Rule Filing”).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> 17 CFR 240.19b-4(e).

<sup>19</sup> 17 CFR 240.12f-2.

<sup>20</sup> Paragraph (D) of Rule 5.1(a)(2) would become paragraph (C) when paragraph (A) to Rule 5.1(a)(2) is deleted, and all the sub-paragraphs of Rule 5.1(a)(2) are re-numbered accordingly, as described above.

<sup>21</sup> FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA’s performance under this regulatory services agreement.

identical to Rules 5P and 8P.<sup>22</sup> NYSE Arca conducts initial and continued listing reviews for ETPs listed on its exchange. The Exchange represents that the initial and continued listing reviews of ETPs listed on the Exchange will be conducted in the same manner as they are on NYSE Arca.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>23</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>24</sup> in particular, in that 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 a national market system, and, in general, to protect investors and the public interest by providing for the listing of Exchange Traded Products, subject to consistent and reasonable standards. Accordingly, the proposed rule change would contribute to the protection of investors and the public interest because it may provide a better listing and trading environment for investors and, generally, encourage greater competition between markets.

The Exchange believes that the proposed rule change is consistent with the above principles. By providing for the listing of ETPs, the Exchange believes its proposal would lead to the addition of liquidity to the broader market and to increased competition among the existing group of liquidity providers. The Exchange also believes that, by so doing, the proposed rule change would encourage the additional utilization of, and interaction with, the exchange market, and provide market participants with improved price discovery, increased liquidity, more competitive quotes and greater price improvement for listed ETPs.

The Exchange further believes that listing ETPs would help raise investors' confidence in the fairness of the market, generally, and their transactions in particular. As such, the listing of ETPs would foster cooperation and coordination with persons engaged in facilitating securities transactions, enhance the mechanism of a free and open market, and promote fair and orderly markets in securities on the Exchange.

The proposal is also designed to promote just and equitable principles of

trade by way of initial and continued listing standards which, if not maintained, would result in the discontinuation of trading in the affected products. These requirements, together with the applicable Exchange trading rules (which apply to the proposed products), ensure that no investor would have an unfair advantage over another respecting the trading of the subject products. On the contrary, all investors would have the same access to, and use of, information concerning the specific products and trading in the specific products, all to the benefit of public customers and the marketplace as a whole.

Furthermore, the proposal is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system by adopting rules that would lead ultimately to the listing and trading of new products on the Exchange. The proposed changes do nothing more than match Exchange rules with what is currently available on other exchanges for the listing of ETPs. The Exchange believes that by allowing for listing opportunities on the Exchange that are already allowed by rule on another market, the proposal would offer another venue for listing ETPs and thereby promote broader competition among exchanges. The Exchange believes that individuals and entities permitted to list ETPs on the Exchange should enhance competition within the mechanism of a free and open market and a national market system, and customers and other investors in the national market system should benefit from more depth and liquidity in the market for the ETPs.

The proposed change is not designed to address any competitive issue, but rather to allow the Exchange to list ETPs. These rules are identical to the rules of NYSE Arca (other than with respects to certain non-substantive and technical amendments described above), which currently lists ETPs on its exchange pursuant to these rules. These proposed rules support competition by allowing for ETP listings on the Exchange.

## B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Since Rules 5P and 8P are already adopted on the Exchange pursuant to approval from the Commission, the Exchange believes that the proposed rule change to allow for these rules to also apply to the listing of

ETPs on the Exchange, would have no impact on competition. To the contrary, limiting Rules 5P and 8P to only apply to the trading pursuant to UTP of ETPs, limits competition in that there are certain products that the Exchange cannot list, while other exchanges, with identical listing rules, can list such products. Thus, approval of the proposed rule change would promote competition because it would allow the Exchange to compete with other national securities exchanges for the listing and trading of ETPs.

## 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 within 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 Exchange consents, the Commission will:

(A) By order approve or disapprove such 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2018-30 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-2018-30. 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

<sup>22</sup> See NYSE ETP Listing Rules Filing, *supra* note 5. Rules 5P and 8P are based on the rules of NYSE Arca.

<sup>23</sup> 15 U.S.C. 78f(b).

<sup>24</sup> 15 U.S.C. 78f(b)(5).

only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2018-30 and should be submitted on or before July 27, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

**Eduardo A. Aleman,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83559; File No. SR-FINRA-2018-013]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Establish a Second Trade Reporting Facility

June 29, 2018.

#### I. Introduction

On April 19, 2018, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a

proposed rule change to establish a second Trade Reporting Facility ("TRF") to be operated in conjunction with Nasdaq, Inc. ("Nasdaq"). The proposed rule change was published for comment in the **Federal Register** on April 26, 2018.<sup>3</sup> The Commission received no comment letters on the proposal. On June 21, 2018, FINRA filed Amendment No. 1.<sup>4</sup> This order approves the proposed rule change, as modified by Amendment No. 1.

#### II. Description of the Proposal

##### Background

FINRA currently has three facilities that allow its members to report over-the-counter ("OTC") trades in NMS stocks:<sup>5</sup> The FINRA/Nasdaq TRF, the FINRA/NYSE TRF, and the Alternative Display Facility ("ADF") (collectively, the "FINRA Facilities"). For each TRF, FINRA is the SRO Member and, as such, it has sole regulatory responsibility for the TRFs, including: Real-time monitoring and T+1 surveillance, development and enforcement of trade reporting rules, and submission of proposed rule changes to the Commission. Nasdaq is the "Business Member" of the FINRA/Nasdaq TRF.<sup>6</sup> A Business Member is primarily responsible for the management of the business affairs of its TRF.<sup>7</sup> Among other things, the Business Member establishes pricing, is obligated to pay the cost of regulation and is entitled to the profits and responsible for the losses derived from the operation of its TRF.<sup>8</sup>

In January 2016, FINRA published a Trade Reporting Notice ("Trade Reporting Notice") that provided guidance on the reporting obligations of member firms regarding OTC equity trades in the event of a systems issue during the trading day that prevents firms from reporting OTC trades in NMS

stocks in accordance with FINRA rules.<sup>9</sup> As set forth in the Trade Reporting Notice, a firm that routinely reports its OTC trades in NMS stocks to one FINRA Facility ("primary facility") must establish and maintain connectivity and report to a second FINRA Facility ("secondary facility") if the firm intends to continue to support OTC trading as an executing broker while its primary facility is experiencing a widespread systems issue.<sup>10</sup>

##### Proposal

FINRA proposed to establish a second FINRA/Nasdaq TRF ("FINRA/Nasdaq TRF Chicago"), to provide FINRA members an additional facility to which to report trades in compliance with FINRA rules and the Trade Reporting Notice. The FINRA/Nasdaq TRF Chicago would be governed by the rules applicable to the existing FINRA/Nasdaq Trade Reporting Facility ("FINRA/Nasdaq TRF Carteret").<sup>11</sup> A primary user of the FINRA/Nasdaq TRF Carteret could report on a back-up basis to the FINRA/Nasdaq TRF Chicago pursuant to the same rules, pricing, features and performance to which the firm is accustomed as a user of the FINRA/Nasdaq TRF Carteret—and vice versa.<sup>12</sup> FINRA/Nasdaq TRF Chicago trade reports would be disseminated with a modifier indicating the source of the transactions that would distinguish them from transactions executed on an exchange or reported to another FINRA Facility, including the FINRA/Nasdaq TRF Carteret.

The proposed rule change would establish the FINRA/Nasdaq TRF Chicago on the same terms as the FINRA/Nasdaq TRF Carteret. The FINRA/Nasdaq TRF Chicago would be built with the same technology, provide

<sup>3</sup> See Securities Exchange Act Release No. 83082 (April 20, 2018), 83 FR 18379 ("Notice"). See also, Securities Exchange Act Release No. 83398 (June 8, 2018), 83 FR 27807 (June 14, 2018) extending the time for the Commission to act on the filing.

<sup>4</sup> In Amendment No. 1, FINRA states that, if the Commission approves the proposed rule change, FINRA anticipates that the FINRA/Nasdaq TRF Chicago will commence operation in September 2018, but in no event later than December 31, 2018. Amendment No. 1 is available at: <https://www.sec.gov/comments/sr-finra-2018-013/finra2018013-3918682-166985.pdf>. Because Amendment No. 1 does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 1 is not subject to notice and comment.

<sup>5</sup> See Rule 600(b) of Regulation NMS under the Act.

<sup>6</sup> NYSE is the Business Member of the FINRA/NYSE TRF.

<sup>7</sup> See Notice at 18381.

<sup>8</sup> See *id.*

<sup>9</sup> See Trade Reporting Notice, January 20, 2016 (OTC Equity Trading and Reporting in the Event of Systems Issues).

<sup>10</sup> As discussed in the Trade Reporting Notice, if a firm chooses not to have connectivity to a secondary facility, it should cease executing OTC trades altogether when its primary trade reporting facility is experiencing a widespread systems issue. In that instance, the firm could route orders for execution to an exchange or another FINRA member (*i.e.*, a member with connectivity and the ability to report trades to a FINRA Facility that is operational).

<sup>11</sup> See Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (order approving SR-NASD-2005-087); and Securities Exchange Act Release No. 54798 (November 21, 2006), 71 FR 69156 (November 29, 2006) (order approving SR-NASD-2006-104).

<sup>12</sup> A FINRA member also has the option to report some trades, on a primary basis, to the FINRA/Nasdaq TRF Chicago, and some trades, on a primary basis, to the FINRA/Nasdaq TRF Carteret.

<sup>25</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.