

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 Number SR-BX-2020-016 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-BX-2020-016. 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 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-BX-2020-016 and should be submitted on or before August 17, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹¹

J. Matthew DeLesDernier,
Assistant Secretary.

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⁹¹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89361; File No. SR-DTC-2020-010]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Revise the Clearing Agency Policy on Capital Requirements

July 21, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 15, 2020, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(3) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the Clearing Agency Policy on Capital Requirements ("Capital Policy" or "Policy") of DTC and its affiliates, National Securities Clearing Corporation ("NSCC") and Fixed Income Clearing Corporation ("FICC," and together with DTC and NSCC, the "Clearing Agencies"). In particular, the proposed revisions to the Capital Policy would (1) update the frequency of the calculation of the Total Capital Requirement (as defined below and in the Policy) to align with the Clearing Agencies' quarterly financial statements; (2) replace the description of the calculation of the Recovery/Wind-down Capital Requirement (as defined below and in the Policy) with a reference to the Clearing Agencies' Recovery & Wind-down Plans⁵ to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(3).

⁵ See Securities Exchange Act Release Nos. 83972 (August 28, 2018), 83 FR 44964 (September 4, 2018) (SR-DTC-2017-021); 83953 (August 27, 2018), 83 FR 44381 (August 30, 2018) (SR-DTC-2017-803); 83973 (August 28, 2018), 83 FR 44942 (September 4, 2018) (SR-FICC-2017-021); 83954 (August 27, 2018), 83 FR 44361 (August 30, 2018) (SR-FICC-2017-805); 83974 (August 28, 2018), 83 FR 44988 (September 4, 2018) (SR-NSCC-2017-017); 83955 (August 27, 2018), 83 FR 44340 (August 30, 2018) (SR-NSCC-2017-805).

eliminate redundancy between these documents; (3) revise the description of the additional liquid net assets ("LNA") funded by equity, referred to as the "Buffer" to provide the Clearing Agencies with flexibility in calculating this discretionary amount; and (4) make other updates and revisions to the Capital Policy in order to simplify the language and improve the clarity of the Policy, as described in greater detail below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Clearing Agencies are proposing to revise the Capital Policy, which was adopted by the Clearing Agencies in July 2017⁶ and is maintained by the Clearing Agencies in compliance with Rule 17Ad-22(e)(15) under the Act,⁷ in order to (1) update the frequency of the calculation of the Total Capital Requirement to align with the Clearing Agencies' quarterly financial statements; (2) replace the description of the calculation of the Recovery/Wind-down Capital Requirement with a reference to the Clearing Agencies' Recovery & Wind-down Plans to eliminate redundancy between these documents; (3) revise the description of the additional LNA funded by equity, referred to as the "Buffer" to provide the Clearing Agencies with flexibility in calculating this discretionary amount; and (4) make other updates and revisions to the Capital Policy in order to simplify the language and improve the clarity of the Policy, as described in greater detail below.

Overview of the Capital Policy

The Capital Policy sets forth the manner in which each Clearing Agency

⁶ See Securities Exchange Act Release No. 81105 (July 7, 2017), 82 FR 32399 (July 13, 2017) (SR-DTC-2017-003, SR-FICC-2017-007, SR-NSCC-2017-004).

⁷ 17 CFR 240.17Ad-22(e)(15).

identifies, monitors, and manages its general business risk with respect to the requirement to hold sufficient LNA funded by equity to cover potential general business losses so the Clearing Agency can continue operations and services as a going concern if such losses materialize.⁸ The amount of LNA funded by equity to be held by each of the Clearing Agencies for this purpose is defined in the Policy as the General Business Risk Capital Requirement. The Policy provides that the General Business Risk Requirement is calculated for each Clearing Agency as the greatest of three separate calculations—(1) an amount based on that Clearing Agency's general business risk profile ("Risk-Based Capital Requirement"), (2) an amount based on the time estimated to execute a recovery or orderly wind-down of the critical operations of that Clearing Agency ("Recovery/Wind-down Capital Requirement"), and (3) an amount based on an analysis of that Clearing Agency's estimated operating expenses for a six month period ("Operating Expense Capital Requirement"). The General Business Risk Capital Requirement for each Clearing Agency is determined as the greatest of these calculations.

The Capital Policy also addresses how each Clearing Agency maintains an amount of LNA funded by equity as a part of its management of credit risk⁹ pursuant to its respective rules,¹⁰ referred to as the "Corporate Contribution." These resources are maintained to address losses due to a participant default and are held in addition to the Clearing Agencies' General Business Risk Capital Requirement. The Capital Policy describes how each Clearing Agency's General Business Risk Capital Requirement and Corporate Contribution fit within the Clearing Agencies' Capital Framework, where the "Total Capital Requirement" of each Clearing Agency is calculated as the

sum of its General Business Risk Capital Requirement and Corporate Contribution. Finally, the Policy provides a plan for the replenishment of capital through the Clearing Agency Capital Replenishment Plan.

Proposed Revisions to the Capital Policy

The Capital Policy is reviewed and approved by the Boards annually. In connection with the most recent annual review of the Policy, the Clearing Agencies are proposing revisions and updates, described in greater detail below. These proposed changes are designed to update the Capital Policy and enhance the clarity of the Policy to ensure that it continues to operate as intended.

1. Update Frequency of Calculation of Total Capital Requirement

The Clearing Agencies are proposing to update the Capital Policy to change the frequency of the calculation of the Total Capital Requirement to occur quarterly, and clarify that the calculation of the Total Capital Requirement would use the most recently completed calculations of the General Business Risk Capital Requirement and the Corporate Contribution. In connection with this proposed change, the Capital Policy would also be amended to remove references to the timing of the other calculations.

As described above, the Total Capital Requirement is the sum of the General Business Risk Capital Requirement and the Corporate Contribution; and the General Business Risk Capital Requirement is the greatest of the Risk-Based Capital Requirement, Recovery/Wind-down Capital Requirement and the Operating Expense Capital Requirement. Currently the Capital Policy states that the Total Capital Requirement is calculated monthly. The Capital Policy also describes the frequency of each of the other calculations that are used in calculating the Total Capital Requirement, which occur at different intervals throughout the year.

The Clearing Agencies are proposing to update the Capital Policy to state that the Total Capital Requirement will be calculated quarterly, using the most recently calculated components. This proposed change would align the timing of this calculation with the timing of each of the Clearing Agencies' quarterly financial statements, where the results of this calculation is reported. While the calculation would occur less frequently than it is currently conducted, the Total Capital Requirement amount does not change materially from month to

month.¹¹ Therefore, the Clearing Agencies believe the calculation would still be completed on an appropriate frequency.

The proposed change would also simplify the Capital Policy by removing the reference to the frequency of each of the other calculations. Each of the other calculations that determine the Total Capital Requirement are completed at different frequencies throughout the year, as currently described in the Capital Policy, and all occur at least annually. The proposed change would state that the most recent results of these calculations would be used in the quarterly calculation of the Total Capital Requirement. These calculations have different purposes and provide the Clearing Agencies with different measures. Therefore, these calculations are completed at different frequencies during the year, generally timed to occur when updated information is available. By removing the frequency of these calculations from the Capital Policy, and only specifying the frequency of the Total Capital Requirement calculation, which would use the most recent results of these underlying calculations, the proposed change would simplify the Policy and would provide the Clearing Agencies with flexibility to adjust the timing of these calculations as necessary.

In order to reflect this change, the Clearing Agencies are proposing to update Section 4 of the Capital Policy to state that the Total Capital Requirement would be calculated quarterly, using the most recent calculations of the General Business Risk Capital Requirement and Corporate Contribution. The proposed changes would also remove statements in Sections 5, 6, 6.1.2 and 6.3 regarding the timing of the underlying calculations.

2. Update Description of Recovery/Wind-Down Capital Requirement To Refer to the Recovery & Wind-Down Plans of the Clearing Agencies

The Clearing Agencies are proposing to amend the Capital Policy with respect to the Recovery/Wind-down Capital Requirement to update references to the Recovery & Wind-down Plans of the Clearing Agencies. In connection with this change, the Capital Policy would also be updated to clarify the role of management in advising the Boards in connection with their annual determination of the Recovery/Wind-down Capital Requirement.

¹¹ The Total Capital Requirement amount has been reported in footnote 9 to the Clearing Agencies' financial statements since the third quarter of 2018, available at <https://www.dtcc.com/legal/financial-statements>.

⁸ *Supra* note 6.

⁹ LNA funded by equity held as the Clearing Agencies' Corporate Contribution is held in addition to resources held by the Clearing Agencies for credit risk in compliance with Rule 17Ad-22(e)(4) under the Act, and in addition to resources held by the Clearing Agencies for liquidity risk in compliance with Rule 17Ad-22(e)(7). 17 CFR 240.17Ad-22(e)(4), (7).

¹⁰ See Rule 4 of the Rules, By-laws and Organizational Certificate of DTC ("DTC Rules"), Rule 4 of the Rulebook of the Government Securities Division of FICC ("GSD Rules"), Rule 4 of the Clearing Rules of the Mortgage-Backed Securities Division of FICC ("MBSD Rules"), and Rule 4 of the Rules & Procedures of NSCC ("NSCC Rules," and together with the DTC Rules, GSD Rules and MBSD Rules, the "Clearing Agencies' Rules" or "Rules"), available at <http://dtcc.com/legal/rules-and-procedures>.

First, the proposed changes would replace descriptions of the calculation of the Recovery/Wind-down Capital Requirement with references to the Clearing Agencies' Recovery & Wind-down Plans, which have been adopted by the Clearing Agencies and include detailed descriptions of the calculation of this amount.¹² The Recovery/Wind-down Capital Requirement is an amount based on the time estimated to execute a recovery or orderly wind-down of the critical operations of that Clearing Agency and is used by the Clearing Agencies to determine their General Business Risk Capital Requirement, as described above. Each of the Clearing Agencies have adopted a Recovery & Wind-down Plan, which provides plans for the recovery and orderly wind-down of each of the Clearing Agencies necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.¹³ Section 8.7 of each of the Recovery & Wind-down Plans includes an analysis of the calculation of the Recovery/Wind-down Capital Requirement.

The Clearing Agencies believe their respective Recovery & Wind-down Plans are the appropriate documents for the description of the calculation of the Recovery/Wind-down Capital Requirement. The proposed change would remove redundancy between these documents and minimize the risk of inconsistency in this description.

In order to implement this change, the Clearing Agencies are proposing to (1) revise the definition of Recovery/Wind-down Capital Requirement in Section 2 of the Capital Policy to refer to the description of this amount in the Recovery & Wind-down Plan of each Clearing Agency; and (2) revise Section 6.2 of the Capital Policy to remove the description of the calculation of the Recovery/Wind-down Capital Requirement and replace it with a reference to this description in the Recovery & Wind-down Plan of each of the Clearing Agencies.

Second, the proposed changes would clarify the role of management with respect to the Boards' annual determination of the Recovery/Wind-down Capital Requirement. Pursuant to the Clearing Agencies' Recovery & Wind-down Plans, and in compliance with the requirements of Rule 17Ad-22(e)(15)(ii) under the Act,¹⁴ the Boards are responsible for determining the Recovery/Wind-down Capital

Requirement for each Clearing Agency on an annual basis.

The Treasury group of The Depository Trust & Clearing Corporation ("DTCC Treasury group") and members of management in other relevant groups may provide the Boards with analyses and relevant data to facilitate this determination. Therefore, the Clearing Agencies are proposing to amend Section 6.2 of the Capital Policy to state that the DTCC Treasury group and members of management in other relevant groups may provide such information to the Boards.

3. Revise Description of Buffer Amount

The Clearing Agencies are proposing to amend the Capital Policy to revise the description of the additional, discretionary amount of LNA funded by equity held by the Clearing Agencies in addition to the Total Capital Requirement, which is referred to as a "Buffer." Currently, the Capital Policy states that the amount of LNA funded by equity held as Buffer would be periodically assessed by the DTCC Treasury group and would generally equal approximately four to six (4–6) months of operating expenses for the respective Clearing Agency. The Clearing Agencies are proposing to make two changes to the description of the Buffer in the Capital Policy, described below.

First, the Clearing Agencies are proposing to remove the specificity regarding how the Buffer amount held by the Clearing Agencies is measured. This proposed change would provide the Clearing Agencies with flexibility to manage capital when determining the appropriate amount of LNA funded by equity that they would each hold in addition to the Total Capital Requirement. The Clearing Agencies would implement this proposed change by amending the description of Buffer in Section 4 of the Capital Policy to remove the reference to four to six (4–6) months of operating expenses, and state simply that this amount is determined based on various factors, including historical fluctuations of LNA and estimates of potential losses from general business risk.

Second, the Clearing Agencies are proposing to amend Section 4 of the Capital Policy to clarify that the Buffer will be calculated at least annually. Currently the Capital Policy states that the Buffer will be calculated periodically. This proposed change would provide more specificity regarding the frequency of this calculation.

4. Technical Revisions and Clarifications

In addition to the proposed changes described above, the Clearing Agencies are also proposing the following technical revisions to the Capital Policy.

First, the proposed changes would update the description of the Corporate Contribution in Figure 1 of Section 4 of the Capital Policy. The proposed change would replace the current description of this amount with a reference to the Clearing Agencies' Rules, where this amount is defined. The proposed change would align the description in Figure 1 of Section 4 with the description of the Corporate Contribution in Section 5 of the Capital Policy, which also describes the Corporate Contribution by referring to the Clearing Agencies' Rules.

Second, the proposed changes would revise Section 6.3 of the Capital Policy to use the defined term for Operating Expense Capital Requirement, which is defined in the Glossary of Key Terms in Section 2 of the Capital Policy.

Third, the proposed changes would also revise Section 6.3 to clarify that the data used to estimate prospective Clearing Agency expenses in calculating the Operating Expense Capital Requirement comes from a budget developed by the Financial Planning & Analysis department for the respective Clearing Agencies.

Finally, the proposed changes would update Section 7.2 of the Capital Policy, which describes where the Clearing Agencies report their assessment of LNA funded by equity against the Total Capital Requirement. The proposed change would state that, in addition to internal reporting, this assessment is also reported publicly in the Clearing Agencies' financial statements.

Each of these proposed changes would make technical drafting corrections or clarifications to the existing descriptions in the Capital Policy. While these proposed changes would not substantively alter the descriptions in the Capital Policy, they would improve the clarity of the Policy.

2. Statutory Basis

The Clearing Agencies believe that the proposed rule changes to the Capital Policy are consistent with the requirements of the Act, and the rules and regulations thereunder applicable to a registered clearing agency. In particular, the Clearing Agencies believe that the proposed changes are consistent with Section 17A(b)(3)(F) of the Act¹⁵

¹² *Supra* note 5.

¹³ *Id.*

¹⁴ 17 CFR 240.17Ad-22(e)(15)(iii).

¹⁵ 15 U.S.C. 78q-1(b)(3)(F).

and Rule 17Ad-22(e)(15) under the Act,¹⁶ for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of the Clearing Agencies be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to assure the safeguarding of securities and funds which are in the custody or control of the Clearing Agencies or for which they are responsible.¹⁷ The Capital Policy is designed to ensure that each of the Clearing Agencies hold sufficient LNA funded by equity to cover potential general business losses so that they can continue the prompt and accurate clearance and settlement of securities transactions, and can continue to assure the safeguarding of securities and funds which are in their custody or control or for which they are responsible if those losses materialize.

The proposed changes described above would not materially alter how the Capital Policy accomplishes this goal. The proposed changes would update the frequency of the calculation of the amount of LNA funded by equity held by the Clearing Agencies. Changing this frequency would not alter the Clearing Agencies' ability to hold an amount needed to cover potential general business losses, as the result of these calculations do not currently change materially on a month to month basis. The proposed change to refer to the Clearing Agencies' Recovery & Wind-down Plans for the description of the Recovery/Wind-down Capital Requirement would reduce the redundancy between the Policy and these plans, and would not alter the calculation of this amount. The proposed change to the description of the Buffer would provide the Clearing Agencies with additional flexibility in calculating this amount, which is held in addition to the amounts needed to meet compliance with their regulatory requirements. Finally, the proposed technical revisions would simplify and clarify the descriptions in the Policy, and would not alter the way the Policy operates.

The proposed revisions would not materially change how the Policy ensures that each of the Clearing Agencies hold sufficient LNA funded by equity to cover potential general business losses but would allow the Clearing Agencies to maintain this document to operate in the way it was intended. Therefore, such proposed revisions would be consistent with the

requirements of Section 17A(b)(3)(F) of the Act.¹⁸

Rule 17Ad-22(e)(15) under the Act requires the Clearing Agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage their respective general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that the Clearing Agencies can continue operations and services as a going concern if those losses materialize.¹⁹ As originally implemented, the Capital Policy was designed to meet the requirements of Rule 17Ad-22(e)(15). For the reasons described above, the proposed revisions would not materially alter how the Clearing Agencies comply with their requirements under this rule. Therefore, the proposed changes would allow the Clearing Agencies to maintain the Capital Policy in a way that continues to be consistent with the requirements of Rule 17Ad-22(e)(15) under the Act.²⁰

(B) Clearing Agency's Statement on Burden on Competition

Each of the Clearing Agencies believes that none of the proposed revisions to the Capital Policy would have any impact, or impose any burden, on competition. The Policy is maintained by the Clearing Agencies in order to satisfy their regulatory requirements and generally reflect internal tools and procedures. Tools and procedures that have a direct impact on the rights, responsibilities or obligations of members or participants of the Clearing Agencies are reflected in the Clearing Agencies' Rules. Accordingly, the Capital Policy enhances the Clearing Agencies' regulatory compliance and internal management and does not have any impact, or impose any burden, on competition.

The proposed revisions would not effect any changes to the fundamental purpose or materially impact the operation of the Capital Policy. As such, the proposed changes also would not have any impact, or impose any burden, on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Clearing Agencies have not solicited or received any written comments relating to this proposal. The Clearing Agencies will notify the

Commission of any written comments received by the Clearing Agencies.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)²¹ of the Act and paragraph (f)²² of Rule 19b-4 thereunder. 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 email to rule-comments@sec.gov. Please include File Number SR-DTC-2020-010 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR-DTC-2020-010. 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,

¹⁸ *Id.*

¹⁹ 17 CFR 240.17Ad-22(e)(15).

²⁰ *Id.*

²¹ 15 U.S.C 78s(b)(3)(A).

²² 17 CFR 240.19b-4(f).

¹⁶ 17 CFR 240.17Ad-22(e)(15).

¹⁷ 15 U.S.C. 78q-1(b)(3)(F).

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 DTC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). 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-DTC-2020-010 and should be submitted on or before August 17, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89367; File No. SR-NYSEAMER-2020-49]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 1.1E To Include Active Proxy Portfolio Shares, Tracking Fund Shares, Proxy Portfolio Shares, and Index Fund Shares

July 21, 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 July 10, 2020, NYSE American LLC ("NYSE American" or "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 amend Rule 1.1E to include Active Proxy Portfolio Shares, Tracking Fund Shares, Proxy Portfolio Shares, and Index Fund

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 1.1E(bbb), 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 Active Proxy Portfolio Shares listed pursuant to NYSE Arca, Inc. ("NYSE Arca") Rule 8.601-E, Tracking Fund Shares listed pursuant to Cboe BZX Exchange, Inc. ("BZX") Rule 14.11(m), and Proxy Portfolio Shares which may in the future be listed pursuant to Nasdaq Stock Market LLC ("Nasdaq") Rule 5750⁴ as additional types of Exchange Traded Products ("ETPs") that may

⁴ Active Proxy Portfolio Shares, Tracking Fund Shares, and Proxy Portfolio Shares are substantially similar products with different names and generally refer to shares of actively managed exchange-traded funds for which the portfolio is disclosed in accordance with standard mutual fund disclosure rules. See Securities Exchange Act Release No. 89185 (June 29, 2020) (order approving NYSE Arca Rule 8.601-E); Securities Exchange Act Release No. 88887 (May 15, 2020), 85 FR 30990 (May 21, 2020) (order approving BZX Rule 14.11(m)); Securities Exchange Act Release No. 89110 (June 22, 2020), 85 FR 38461 (June 26, 2020) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Nasdaq Rule 5750 to List and Trade Proxy Portfolio Shares). On June 4, 2020, BZX commenced trading its first securities listed under BZX Rule 14.11(m) (Fidelity Blue Chip Growth ETF (FBCG), Fidelity Blue Chip Value ETF (FBCV), and Fidelity New Millennium ETF (FMIL)). Although Nasdaq has rules pertaining to Proxy Portfolio Shares, it does not yet list any such product.

trade on the Exchange pursuant to unlisted trading privileges ("UTP").

To effect this change, the Exchange proposes to add a bullet point listing "Active Proxy Portfolio Shares listed pursuant to NYSE Arca, Inc. Rule 8.601-E, Tracking Fund Shares listed pursuant to Cboe BZX Exchange, Inc. Rule 14.11(m), and Proxy Portfolio Shares listed pursuant to Nasdaq Stock Market LLC Rule 5750" in Rule 1.1E(bbb) to include them in the enumerated list of ETPs that may trade on the Exchange on a UTP basis. The Exchange also proposes non-substantive changes to accommodate the addition of this bullet point as the final item in the bulleted list in Rule 1.1E(bbb).

The Exchange also proposes to amend Rule 1.1E(bbb) to include Index Fund Shares listed pursuant to BZX Rule 14.11(c) or Nasdaq Rule 5705(b) as a type of ETP that may trade pursuant to UTP. To effect this change, the Exchange proposes to amend the existing bullet point listing "Investment Company Units" to include Index Fund Shares as the alternative name for the same product. Accordingly, the Exchange proposes to revise the bullet point to list "Investment Company Units listed pursuant to NYSE Arca, Inc. Rule 5.2-E(j)(3) and Index Fund Shares listed pursuant to Cboe BZX Exchange, Inc. Rule 14.11(c) or Nasdaq Stock Exchange LLC Rule 5705(b)."

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 modifies Rule 1.1E(bbb) to state the complete list of ETPs that may trade on a UTP basis on the Exchange, providing specificity, clarity, and transparency in the Exchange's rules. Moreover, the proposed rule change will facilitate the trading of additional types of ETPs on the Exchange pursuant to UTP, thereby enhancing competition among market participants for the benefit of investors and the marketplace.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) & (5).

²³ 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.