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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82028; File No. SR-NYSE-2017-36]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Adopt New Equity Trading Rules to Trade Securities Pursuant to Unlisted Trading Privileges, Including Orders and Modifiers, Order Ranking and Display, and Order Execution and Routing on Pillar, the Exchange's New Trading Technology Platform
November 7, 2017.

I. Introduction

On July 28, 2017, New York Stock Exchange LLC (“NYSE” or “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 adopt new equity trading rules to allow the Exchange to trade securities pursuant to unlisted trading privileges (“UTP Securities”)³ on Pillar, the Exchange’s new trading technology platform. The proposed rule change was published for comment in the Federal Register on August 9, 2017.⁴ On September 18, 2017, the Commission designated a longer period within

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ NYSE Rules define “UTP Security” as a security that is listed on a national securities exchange other than the Exchange and that trades on the Exchange pursuant to unlisted trading privileges. See NYSE Rule 1.1(ii).

⁴ See Securities Exchange Act Release No. 81310 (Aug. 3, 2017), 82 FR 37257 (Aug. 9, 2017) (“Notice”).

which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved.⁵ The Commission received no comments on the proposed rule change. This order institutes proceedings under Section 19(b)(2)(B) of the Exchange Act⁶ to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to adopt equities trading rules to implement Pillar, a new trading technology platform, in order to introduce trading of UTP Securities on the Exchange. Under the proposal, the Pillar platform rules, as set forth in NYSE Rules 1P – 13P, would govern trading in UTP Securities on the Exchange.⁷ The Exchange proposes rule changes relating to clearly erroneous executions; the limit up-limit down plan; short sales; halts; orders and modifiers; order ranking, display, execution, and routing; odd and mixed lots; the tick size pilot plan. The Exchange also proposes to specify the current Exchange rules that would not be operative under Pillar.

Pursuant to the proposal, UTP Securities would trade under the Exchange’s current parity allocation model.⁸ Designated market makers (“DMMs”) would not be assigned UTP Securities

⁵ See Securities Exchange Act Release No. 81641 (Sept. 18, 2017), 82 FR 44483 (Sept. 22, 2017) (“Extension”).

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Securities Exchange Act Release No. 76803 (Dec. 30, 2015), 81 FR 536 (Jan. 6, 2016) (SR-NYSE-2015-67) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change) (adopting a framework of rule numbering based on NYSE Arca rules in advance of the NYSE adopting Pillar).

⁸ The Pillar platform on NYSE Arca and NYSE American uses a price-time allocation model. See NYSE Arca Rule 7.37-E(a) and NYSE American Rule 7.37E(a).

on Pillar.⁹ Supplemental Liquidity Providers¹⁰ would be eligible to be assigned UTP Securities, and member organizations operating floor broker operations that are physically located on the floor would also be eligible to trade UTP Securities,¹¹ but UTP Securities would not be available for floor-based point-of-sale trading. Finally, the Exchange would not conduct auctions in UTP Securities.¹² The Exchange represents that it will continue to trade NYSE-listed securities on its current trading platform.¹³

The Exchange represents that the proposal to trade UTP Securities on Pillar is based in part on the equity trading rules of NYSE Arca, Inc. (“NYSE Arca”) and NYSE American LLC (“NYSE American”), with the following substantive differences. First, as noted earlier, the Exchange would use a parity allocation model with a setter priority allocation for the participant that sets the best bid or offer on the Exchange (“BBO”).¹⁴ Second, the Exchange would not offer a Retail Liquidity Program or the associated order types—Retail Orders and Retail Price Improvement Orders. Third, as noted above, the Exchange would not conduct auctions. Fourth, the Exchange would offer only two trading sessions—an Early Trading Session and a Core Trading Session. Finally, the Exchange’s order types and modifiers would differ from the order types and modifiers offered by NYSE Arca and NYSE American.

⁹ See Notice, supra note 3, 82 FR at 37258.

¹⁰ See Proposed NYSE Rule 107B.

¹¹ According to the Exchange, member organizations trading UTP Securities would be required to comply with Section 11(a)(1) of the Act, 15 U.S.C. 78k(a)(1), and with any exceptions that are currently applicable to trading on the Exchange. See Notice, supra note 3, 82 FR at 37258 n.12.

¹² See Notice, supra note 3, 82 FR at 37258.

¹³ The Exchange states that it plans to transition trading in NYSE-listed securities to Pillar at a later date, and will file separate proposed rule changes to implement that transition. See Notice, supra note 3, 82 FR at 37258 n.9.

¹⁴ See NYSE Rule 1.1(h) (defining “BBO” as the best bid or offer on the Exchange).

The Exchange represents that it will announce the implementation of trading UTP Securities on Pillar by a Trader Update. The Exchange anticipates that the implementation will occur in the first quarter of 2018. If the Exchange begins trading UTP Securities on Pillar, certain current NYSE trading rules would not be applicable. The Exchange proposes to mark the affected Exchange rules with a preamble to state that the rules are not applicable to trading UTP Securities on Pillar.

The Notice contains a detailed description of the proposal. The following section briefly summarizes the proposal.

A. NYSE Rule 7P – Equities Trading

The Exchange proposes several new rules and changes to existing rules in NYSE Rule 7P. Currently, Section 1 of NYSE Rule 7P sets forth general provisions relating to equities trading on Pillar, such as hours of business and clearance and settlement. The Exchange proposes to add NYSE Rules 7.10 (clearly erroneous executions); 7.11 (limit up-limit down); and 7.16 (short sales) to Section 1 of NYSE Rule 7P and amend NYSE Rule 7.18 (halts).

Section 3 of NYSE Rule 7P sets forth the rules for trading on Pillar. The Exchange proposes to add to this section new NYSE Rules 7.31 (orders and modifiers); 7.34 (trading sessions); 7.36 (order ranking and display); 7.37 (order execution and routing); and 7.38 (odd and mixed lots). Finally, the Exchange proposes to add new NYSE Rule 7.46 to Section 5 of NYSE Rule 7P to establish rules to implement the Tick Size Pilot Plan.

1. General Provisions

The Exchange proposes to establish rules relating to clearly erroneous executions, the limit up-limit down plan, short sales, and trading halts with respect to UTP Securities.

Proposed NYSE Rule 7.10 would set forth the Exchange's rules governing clearly erroneous executions.¹⁵ The proposed rule would set forth how a member organization could request a review of an order that was submitted erroneously, the timing of Exchange review, thresholds for determining clearly erroneous execution, review procedures, and other rules governing clearly erroneous executions.

The Exchange represents that the proposed rule is based on NYSE Arca Rule 7.10-E and NYSE American Rule 7.10E, except that the proposed rule would omit references to: (1) the Late Trading Session,¹⁶ since the Exchange would not offer a late trading session; (2) Cross Orders,¹⁷ since the Exchange would not offer cross orders; and (3) executions in the Trading Halt Auction, since the Exchange would not conduct auctions for UTP Securities.¹⁸

Proposed NYSE Rule 7.11 would establish rules governing how the Exchange would comply with the Regulation NMS Plan to Address Extraordinary Market Volatility ("LULD Plan"). The LULD Plan addresses extraordinary market volatility and is intended to prevent trades in NMS securities from occurring outside of specified price bands, and the proposed rule would implement the LULD Plan on the Exchange's Pillar platform. The Exchange represents that the proposed rule is based on NYSE American 7.11E with the following differences:

(1) there would be no option for member organizations to enter an instruction to cancel Limit Orders that cannot be traded or routed at prices within the price bands; (2) there would be no provisions and references relating to Q Orders, Limit IOC Cross Orders, or orders with specific

¹⁵ See Proposed NYSE Rule 7.10.

¹⁶ See Proposed NYSE Rule 7.34 and see infra the related discussion below.

¹⁷ See Proposed NYSE Rule 7.31 and see infra the related discussion below.

¹⁸ The Exchange proposes that current NYSE Rule 128 (Clearly Erroneous Executions For NYSE Equities) would not be applicable for trading in UTP Securities on Pillar.

routing instructions because the Exchange will not offer these order types;¹⁹ (3) there would be no provision on reopenings since the Exchange will not conduct auctions; and (4) the proposed rules would not include references to Day ISO orders, an order type that NYSE American does not offer.

Proposed NYSE Rule 7.16 would set forth the Exchange's short sale rule, which would govern short sales and compliance with Regulation SHO. The Exchange represents that the proposed rule is based on NYSE Arca Rule 7.16-E and NYSE American Rule 7.16E with two substantive differences. First, because the proposed rule would not apply to the Exchange's listed securities, the Exchange would not evaluate the triggering of the short sale price restrictions pursuant to Rule 201 of Regulation SHO for covered securities in which the Exchange is not the listing market.²⁰ Second, the Exchange is not proposing a rule that relates to Tracking Orders, Cross Orders, or the Proactive if Locked/Crossed Modifier because the Exchange would not offer these order types for UTP Securities.²¹

Current NYSE Rule 7.18 governs trading halts in an UTP Security. The Exchange proposes to add proposed Rule 7.18(b), which would set forth how the Exchange would process new and existing orders in an UTP Security during an UTP Regulatory Halt.²² The Exchange

¹⁹ See Proposed NYSE Rule 7.31 and the related discussion below.

²⁰ As a result, the Exchange would not include rules based on NYSE Arca Rules 7.16-E(f)(3), 7.16-E(f)(4)(A), or 7.16-E(f)(4)(B) or NYSE American Rules 7.16E(f)(3), 7.16E(f)(4)(A), or 7.16E(f)(4)(B).

²¹ Current NYSE Rule 440B (Short Sales) would not be applicable to trading UTP Securities on Pillar.

²² See Proposed NYSE Rule 7.18(b). UTP Regulatory Halt is defined in current NYSE Rule 1.1(kk) to mean a trade suspension, halt, or pause called by the UTP Listing Market in an UTP Security that requires all market centers to halt trading in that security. NYSE Rule 1.1(jj) defines the term "UTP Listing Market" as the primary listing market for an UTP Security.

represents that the proposed rule is based on NYSE Arca Rule 7.18-E(b) and subparagraphs (1)–(6), as well as NYSE American Rule 7.18E(b) and subparagraphs (1)–(6), except that the Exchange would not refer to “Primary Only” order types because the Exchange would not offer this order type. The Exchange also proposes to add NYSE Rule 7.18(d)(1)(A), which would allow the Exchange to continue to trade an UTP Exchange Traded Product for the remainder of the Early Trading Session in certain situations.²³ The Exchange represents that the proposed rule is based on NYSE Arca Rule 7.18-E(d)(1)(A) and NYSE American Rule 7.18E(d)(1)(A), with no substantive differences.²⁴

2. Trading Rules for Pillar

The Exchange proposes trading rules for Pillar, including a description of order types and modifiers, trading sessions, how orders are displayed and ranked, how orders are executed and routed, and how odd lots and mixed lots are ranked and executed.

Proposed NYSE Rule 7.31 would set forth the primary order types, as well as time-in-force modifiers, auction-only orders, orders with conditional or undisplayed price and/or size, orders with instructions not to route, pegged orders, and other order instructions and modifiers that would be available on Pillar. The Exchange represents that the proposed orders and modifiers are a subset of those offered on NYSE Arca and NYSE American, with several substantive differences.

²³ See Proposed NYSE Rule 7.18(d)(1)(A). Specifically, this rule would apply if an UTP Exchange Traded Product begins trading on the Exchange in the Early Trading Session and a temporary interruption occurs in a major market vendor’s calculation or wide dissemination of either the Intraday Indicative Value or the value of the underlying index to the UTP Exchange Traded Product, as applicable.

²⁴ The Exchange proposes two non-substantive changes: (1) amend NYSE Rule 7.18(a) to update a cross-reference and (2) amend NYSE Rule 7.18(d)(1)(B) to replace the phrase “Normal Trading Hours” with the phrase “Core Trading Session.” See Proposed NYSE Rule 7.34(a)(2) (defining Core Trading Session).

The proposed NYSE rule differs from the NYSE Arca and NYSE American rules as follows: (1) NYSE would not offer auctions in UTP Securities (Auction-Only Orders would be routed to the primary listing markets); (2) Limit Orders entered before the Core Trading Session would be designated for both the Early and Core Trading Sessions; (3) the Exchange would not offer the option to designate certain orders with a Non-Display Remove Modifier; (4) Intermarket Sweep Orders would not be available to floor brokers; (5) Pegged Orders would be available only to floor brokers;²⁵ and (6) the Exchange would not offer certain order types.²⁶ The proposed rule also sets forth how Self Trade Prevention Modifiers would function consistent with the Exchange's proposed allocation model.²⁷

Proposed NYSE Rule 7.34 would specify that the Exchange would operate Early and Core Trading Sessions. The Exchange represents that the proposed rule is based on NYSE Arca Rule 7.34-E and NYSE American Rule 7.34E, except for the following substantive differences: (1) the Exchange would offer two trading sessions—an Early Trading Session and a Core

²⁵ Currently, NYSE only offers pegged orders for floor brokers. See NYSE Rule 13(f)(1) (stating that pegging interest “must be an e-Quote or d-Quote”). See NYSE Rule 70 for more information on e-Quote and d-Quote.

²⁶ The Exchange would not offer Tracking Orders, Cross Orders, Q Orders, orders that include specific routing instructions (which includes Primary Only Orders), Inside Limit Orders, Limit IOC Cross Orders, Market Pegged Orders, Discretionary Pegged Orders, or the Proactive if Locked/Crossed Modifier. However, the Exchange would offer the order type Non-Displayed Primary Pegged Order, which NYSE Arca does not offer. The Exchange would also offer order types and modifiers not offered by NYSE American (Primary Pegged Orders, ALO Orders, Day ISO Orders, IOC ISO Orders, and MPL Orders with an ALO Modifier).

²⁷ The Exchange proposes additional rules addressing how the self-trade prevention modifiers STP Cancel Newest and STP Cancel Oldest orders would interact with resting orders in a priority category that allocates orders based on parity. The Exchange proposes that current NYSE Rules 13 (Orders and Modifiers) and 70 (Execution of Floor Broker Interest) would not be applicable for trading in UTP Securities on Pillar.

Trading Session—instead of three trading sessions²⁸; (2) the Early Trading Session would start at 7:00 a.m. Eastern Time (rather than 4:00 a.m. Eastern Time on NYSE Arca); (3) the Exchange would deem an order entered before or during the Early or Core Trading Session as designated for both trading sessions;²⁹ (4) the Exchange would not reference current NYSE Rule 7.44 because the Exchange would not offer a retail liquidity program; (5) in the Early Trading Session, Market Orders would be treated like Auction-Only Orders and would be routed to the primary listing market on arrival, instead of being rejected; and (6) the Exchange would not include provisions involving auctions and would not refer to order types that it does not offer (e.g., Cross Orders).

Proposed NYSE Rule 7.36 would set forth how orders are ranked and displayed, and the priority of orders. As noted earlier, the Exchange would use a parity allocation model for the trading of UTP securities. The Exchange represents that proposed subsections NYSE Rule 7.36(a)–(g) are based on NYSE Arca Rule 7.36-E(a)–(g) and NYSE American Rule 7.36(a)–(g) with several substantive differences. The Exchange would add the term “Participant” based on the term “individual participant” in current NYSE Rule 72(c)(ii), and a new term “Aggressing Order.”³⁰ Proposed NYSE Rule 7.36(b)(2) would not include the reference to NYSE Arca Rule 7.7-E—which prohibits ETP Holders from transmitting through the facilities of the Exchange information regarding a bid, offer, indication of an order, or the ETP Holder’s identity unless the

²⁸ NYSE Arca and NYSE American also offer a Late Trading Session. See NYSE Arca Rule 7.34-E(a)(3) and NYSE American Rule 7.34E(a)(3). NYSE would not offer a Late Trading Session.

²⁹ Proposed NYSE Rule 7.34(b) would also provide that an order would be deemed designated with a day time-in-force modifier if that order did not have a time-in-force designation.

³⁰ See Proposed NYSE Rule 7.36(a)(6). An Aggressing Order is a buy (sell) order that is or becomes marketable against sell (buy) interest on the Exchange Book.

originating ETP Holder grants permission or affirmatively elects to disclose its identity—because all non-marketable displayed Limit Orders would be displayed on an anonymous basis. Proposed NYSE Rule 7.36(c) would not include a reference to price-time priority since the Exchange would operate under its existing parity allocation model, and there would be three priority categories for orders instead of four categories on NYSE Arca and NYSE American.³¹

Proposed NYSE Rule 7.36(h) sets forth the rules for Setter Priority. The Exchange represents that the proposed rule is based in part on current NYSE Rule 72, with several substantive differences: (1) in addition to establishing the BBO,³² an order would have to either establish a new national best bid or offer (“NBBO”)³³ or join an Away Market NBBO to be eligible for Setter Priority; (2) unlike current NYSE Rule 72(a)(ii), Setter Priority would not be available for a resting order solely because that order is the only interest at a given price when that price becomes the BBO; (3) Setter Priority would not be available for reserve quantities that

³¹ See Proposed NYSE Rule 7.36(e). The proposed priority categories are Priority 1 – Market Orders, Priority 2 – Display Orders, and Priority 3 – Non-Displayed Orders. The category Tracking Orders, which appears as a Priority 4 category in NYSE Arca 7.36-E and NYSE American 7.36E, is not included in the Exchange’s proposed rule.

³² See NYSE Rule 1.1(h).

³³ See NYSE Rule 1.1(dd) (defining NBBO as the national best bid or offer) and Rule 600(b)(42) of Regulation NMS (“National best bid and national best offer means, with respect to quotations for an NMS security, the best bid and best offer for such security that are calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan; provided, that in the event two or more market centers transmit to the plan processor pursuant to such plan identical bids or offers for an NMS security, the best bid or best offer (as the case may be) shall be determined by ranking all such identical bids or offers (as the case may be) first by size (giving the highest ranking to the bid or offer associated with the largest size), and then by time (giving the highest ranking to the bid or offer received first in time)”). 17 CFR 242.600(b)(42).

replenish the display quantity of a Reserve Order;³⁴ and (4) orders that are routed and return unexecuted would be eligible for Setter Priority consistent with proposed NYSE Rules 7.16(f)(5)(H), 7.36(f)(1)(A) and (B), and 7.38(b)(2), which govern the working time assigned to the return quantity of an order.³⁵ In addition, the Exchange proposes that an order would be evaluated for Setter Priority when the order becomes eligible to trade for the first time upon the transition to a new trading session;³⁶ that an order would retain Setter Priority when transitioning from one trading session to another;³⁷ and that an order would lose Setter Priority if it is assigned a new display price.³⁸

Proposed NYSE Rule 7.37 would govern how orders would execute and route. Proposed NYSE Rule 7.37(a) would govern order execution. Proposed NYSE Rule 7.37(b) would govern order allocation, as described further below. And proposed NYSE Rule 7.37(c)–(g) would govern routing, the data feeds the Exchange would use, the prohibition on quotations that lock or cross the protected best bid or offer, and exceptions to the Commission’s Order Protection Rule.

The Exchange represents that proposed Rule 7.37 is based on NYSE Arca Rule 7.37-E(a)–(f) and NYSE American Rule 7.37E(a)–(f), with the following substantive differences. The proposed rule would not include references to Inside Limit Orders and orders with specific routing instructions since the Exchange will not offer these order types. Proposed NYSE Rule

³⁴ See Proposed NYSE Rule 7.36(h)(4)(B). The Exchange proposes that resting orders that are the only interest at the price when that price becomes the BBO, and the replenished portion of a Reserve Order, would not be eligible for Setter Priority on Pillar in order to encourage displayed orders that are aggressively priced.

³⁵ The Exchange proposes that NYSE Rules 72(a), (b), and (c)(xii) would not be applicable to trading UTP Securities on Pillar.

³⁶ See Proposed NYSE Rule 7.36(h)(1)(B).

³⁷ See Proposed NYSE Rule 7.36(h)(2)(E).

³⁸ See Proposed NYSE Rule 7.36(h)(3)(B).

7.37 would not include rule text from NYSE Arca Rules 7.37-E(b)(3) or (d)(1)³⁹ because, like NYSE American, the Exchange would neither use data feeds from broker-dealers nor route to away markets that do not display protected quotations. Also, in proposed NYSE Rule 7.37(a), the Exchange would use the proposed new term “Aggressing Order” instead of “incoming marketable order” when referring to orders that would be matched for execution.⁴⁰

Proposed NYSE Rule 7.37(b) would establish how Aggressing Orders are allocated against contra-side orders. The Exchange represents that the proposed rule is based in part on current NYSE Rule 72(c) with the following substantive differences: (1) the Exchange would maintain separate allocation wheels at each price for displayed and non-displayed orders on each side of the market;⁴¹ (2) allocations to a Floor Broker Participant would be allocation to orders represented by that Floor Broker on parity; (3) the proposed rule would not reference DMM allocations as there would be no DMMs assigned to UTP Securities; (4) the Exchange would offer Mid-Point Liquidity Orders (“MPL”) with a Minimum Trading Size (“MTS”), and the orders would be allocated based on MTS size and time;⁴² (5) if resting orders on one side of the market are repriced and become marketable against contra-side orders on the Exchange book, the Exchange would rank the re-priced orders as described in proposed NYSE Rule 7.36(c) and trade them as Aggressing Orders consistent with their ranking; and (6) proposed NYSE Rule

³⁹ NYSE Arca Rule 7.37-E(b)(3) provides ETP Holders the option to bypass away markets that are not displaying protected quotations. NYSE Arca Rule 7.37-E(d)(1) states that NYSE Arca receives data feeds directly from broker-dealers for the purpose of routing interest to away markets that are not displaying protected quotations.

⁴⁰ See supra note 37.

⁴¹ Current NYSE Rule 72(c)(viii) sets forth a single allocation wheel for each security. According to the Exchange, the proposed NYSE Rule for Pillar would permit a member organization to establish a position at each price point, instead of simply adding the order to a single allocation wheel with multiple price points.

⁴² See Proposed NYSE Rule 7.37(b)(1)(E)).

7.37(b)(9) would provide that if resting orders on both sides of the market are repriced and become marketable against one another, the Exchange would rank the orders based on proposed NYSE Rule 7.36(c) and determine which orders are the Aggressing Orders based on their ranking.⁴³

Proposed NYSE Rule 7.38 sets forth how odd-lot and mixed-lot orders would be ranked and executed. The Exchange represents that the proposed rule is based on NYSE Arca Rule 7.38-E and NYSE American 7.38E, except that, if the display price of an odd-lot order to buy (sell) is greater than (less than) its working price, the order would be ranked and allocated based on its display price.⁴⁴

3. Tick Size Pilot Plan

Proposed NYSE Rule 7.46 sets forth the rules for the Tick Size Pilot Plan. The Exchange represents that the proposed rule is based on NYSE American Rule 7.46E, except that: (1) the Exchange would not include text relating to Market Pegged Orders or Limit IOC Cross Orders (as the Exchange would not offer these orders); (2) proposed NYSE Rules 7.46(f)(5)(A) and (B) would govern ranking and allocation for Pilot Securities in Test Group Three instead of Rules 7.36(e) and 7.37(b)(1), respectively;⁴⁵ and (3) proposed NYSE Rules 7.46(f)(5)(F)(i)(a) and (b) are based on NYSE Arca Rules 7.46-E(f)(5)(F)(i)(a) and (b) because NYSE American does

⁴³ The Exchange proposes that NYSE Rules 15A, 19, 72(c), 1000, 1001, 1002, and 1004 would not apply to trading UTP Securities on Pillar. As NYSE Rule 72(d) would also not apply to trading UTP Securities on the Pillar trading platform, the Exchange proposes that NYSE Rule 72 in its entirety would not apply to trading UTP Securities on Pillar.

⁴⁴ The Exchange proposes that current NYSE Rule 61 (Recognized Quotations) would not be applicable to trading UTP Securities on Pillar.

⁴⁵ The Exchange did not provide a reason for this rule change.

not offer Day ISO orders. Proposed NYSE Rules 7.46(f)(5)(F)(ii) and (iii) include ALO orders, which, like Day ISO orders, are not offered by NYSE American.⁴⁶

B. Amendments to NYSE Rules 103B and 107B

The Exchange proposes to amend NYSE Rule 103B(I) (Security Allocation and Reallocation) to state that UTP Securities will not be allocated to a DMM Unit. Also, the Exchange proposes to amend NYSE Rule 107B (Supplemental Liquidity Providers) to change “NYSE-listed securities” to “NYSE-traded securities.” According to the Exchange, the change reflects that UTP Securities would be eligible for assignment to Supplemental Liquidity Providers.

C. Retail Liquidity Program Not Available on Pillar

The Exchange does not plan to offer a retail liquidity program for UTP Securities on Pillar. For this reason, the Exchange proposes that NYSE Rule 107C would not apply to trading UTP Securities on Pillar. Also, proposed rules based on NYSE Arca rules that cross reference NYSE Arca Rule 7.44-E would not include that rule reference.

D. Current NYSE Rules Not Applicable to Pillar

Under the Exchange’s proposal, several current NYSE rules would not apply to trading in UTP Securities as they are superseded by the proposed rules. Several additional rules, which do not have counterparts in the proposed Pillar rules, would not apply to trading in UTP Securities as they are related to auctions and floor-based point-of-sale trading. Further information about

⁴⁶ The Exchange proposes that current NYSE Rule 67 (Tick Size Pilot Plan) would not be applicable for trading in UTP Securities on Pillar.

current NYSE rules that would not apply to UTP trading on the Pillar platform can be found in the Notice.⁴⁷

III. Proceedings to Determine Whether to Approve or Disapprove the Proposal

The Commission is instituting proceedings pursuant to Section 19(b)(2) of the Act⁴⁸ to determine whether the Exchange's proposed rule change should be approved or disapproved. The Commission believes it is appropriate to institute proceedings at this time in view of the legal and policy issues raised by the proposal, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act, the Commission is providing notice of the grounds for disapproval under consideration. In particular, the Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Sections 6(b)(5) and 6(b)(8) of the Act.⁴⁹ Section 6(b)(5) 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, 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."⁵⁰ In addition, Section 6(b)(5) of the Act prohibits the rules of an exchange from being "designed to permit unfair discrimination between customers,

⁴⁷ See Notice, supra note 3, 82 FR at 37270, for a list of NYSE rules that are not applicable to Pillar.

⁴⁸ 15 U.S.C. 78s(b)(2).

⁴⁹ 15 U.S.C. 78f(b)(5) and (b)(8).

⁵⁰ Id.

issuers, brokers, or dealers.”⁵¹ Section 6(b)(8) of the Act, requires that the rules of a national securities exchange “not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].”⁵²

As discussed above, NYSE proposes to commence UTP trading of Tape B and C securities and to do so on its new Pillar trading platform. There would be no DMM assigned to UTP Securities; there would be no Floor-based point of sale for UTP Securities; the Exchange would not conduct auctions in UTP Securities; and the Exchange would allocate executions in UTP Securities using a modified version of its parity allocation system, granting one place on the allocation wheel to each Floor Broker Participant and one place on the allocation wheel to orders collectively represented in the Exchange Book. Additionally, Floor Brokers would be able to use certain order types, such as Pegging Orders, that would not be available to other market participants.⁵³

The Commission seeks commenters’ views on whether the Exchange’s proposal is consistent with Section 6(b)(5) and Section 6(b)(8) of the Act. In particular, the Commission seeks commenters’ view on the following questions.

- Unlike the Exchange’s existing trading model for its listed securities, there would be no DMM assigned to UTP Securities, no Floor-based point of sale for UTP Securities, no Crossing Orders, and no auction in UTP Securities. Given these

⁵¹ Id.

⁵² 15 U.S.C. 78f(b)(8).

⁵³ After Market Orders trade based on time and the order with Setter Priority, if eligible, receives an allocation, Proposed NYSE Rule 7.37(b) allocates orders based on parity by Participant. Proposed NYSE Rule 7.36(a)(5) defines Participant as a Floor broker trading license (a “Floor Broker Participant”) or orders collectively represented in the Exchange Book that have not been entered by a Floor broker (“Book Participant”).

differences from the market structure in which Floor Brokers currently operate, what are commenters' views on the role that Floor Brokers would play in trading UTP Securities on the Exchange?

- What benefits or costs, if any, would the activities of Floor Brokers create for trading of UTP Securities on the Exchange? What benefits or costs, if any, would accrue to the customers of the Floor Brokers? Would these benefits or costs vary depending on the type of Floor Broker customer or the means the customer used to submit an order through a Floor Broker? What benefits or costs, if any, would accrue to participants on the Exchange that are not customers of a Floor Broker?
- Would providing Floor Brokers with parity allocation in UTP Securities, or providing them with exclusive use of certain order instructions, unfairly discriminate against market participants who do not submit orders through a Floor Broker? Would providing parity to Floor Brokers, or providing them with exclusive use of certain order instructions, impose a burden on competition that is not necessary or appropriate?

IV. Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data and arguments with respect to the concerns identified above, as well as any others they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is inconsistent with Section 6(b)(5), Section 6(b)(8), or any other provision of the Act, or the rules and regulation thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by

an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.⁵⁴

Interested persons are invited to submit written data, views and arguments regarding whether the proposal should be disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register].

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2017-36 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 Numbers SR-NYSE-2017-36. The file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposal

⁵⁴ Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 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).

that are filed with the Commission, and all written communications relating to the proposal 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-2017-36 and should be submitted on or before [insert date 21 days from publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁵

Eduardo A. Aleman,
Assistant Secretary.

⁵⁵ 17 CFR 200.30-3(a)(57).

