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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82819; File No. SR-NYSENAT-2018-02]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing of Proposed Rule Change to Support the Re-launch of the Exchange on the Pillar Trading Platform

March 7, 2018

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b-4 thereunder,[3] notice is hereby given that, on February 21, 2018, NYSE National, Inc. (the "Exchange" or "NYSE National") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NYSE National. 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 the following rules and rule changes to support the re-launch of the Exchange on the Pillar trading platform: (1) Amendments to Article V, Sections 5.01 and 5.8 of the Fourth Amended and Restated Bylaws of NYSE National ("Bylaws"); (2) new rules based on the rules of the Exchange's affiliates relating to (a) trading securities on an unlisted trading privileges basis (Rules 5 and 8), (b) trading on the Pillar trading platform (Rules 1 and 7), (c) disciplinary rules (Rule 10), and (d) administration of the Exchange (Rules 3, 12, and 13); (3)

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1 15 U.S.C.78s(b)(1).

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

rule changes that renumber current Exchange rules relating to (a) membership (Rule 2), (b) order audit trail requirements (Rule 6), and (c) business conduct, books and records, supervision, extensions of credit, and trading practices (Rule 11); and (4) deletion of Chapters I – XVI and the rules contained therein. 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

1. [sic] Background

On February 1, 2017, the Exchange ceased trading operations.[4] The Exchange proposes to re-launch trading operations on Pillar, which is an integrated trading technology platform designed to use a single specification for connecting to the equities and options markets operated

[4] See Securities Exchange Act Release No. 80018 (February 10, 2017), 82 FR 10947 (February 16, 2017) (SR-NSX-2017-04) ("Termination Filing"). On January 31, 2017, Intercontinental Exchange, Inc. ("ICE"), through its wholly-owned subsidiary NYSE Group, acquired all of the outstanding capital stock of the Exchange (the "Acquisition"). See Securities Exchange Act Release No. 79902 (January 30, 2017), 82 FR 9258 (February 3, 2017) (SR-NSX-2016-16). Prior to the Acquisition, the Exchange was named "National Stock Exchange, Inc."

by the Exchange and its affiliates, NYSE Arca, Inc. ("NYSE Arca"), NYSE American LLC ("NYSE American"), and New York Stock Exchange LLC ("NYSE").[5] Subject to rule approvals, the Exchange anticipates re-launching trading operations on Pillar in the second quarter of 2018.

In the Spring of 2016, NYSE Arca's cash equities market was the first trading system to migrate to Pillar.[6] NYSE American's cash equities market transitioned to Pillar on July 24,

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5 See www.nyse.com/pillar.

6 In connection with the NYSE Arca implementation of Pillar, NYSE Arca filed four rule proposals relating to Pillar. See Securities Exchange Act Release Nos. 74951 (May 13, 2015), 80 FR 28721 (May 19, 2015) (Notice) and 75494 (July 20, 2015), 80 FR 44170 (July 24, 2015) (SR-NYSEArca-2015-38) (Approval Order of NYSE Arca Pillar I Filing, adopting rules for Trading Sessions, Order Ranking and Display, and Order Execution); Securities Exchange Act Release Nos. 75497 (July 21, 2015), 80 FR 45022 (July 28, 2015) (Notice) and 76267 (October 26, 2015), 80 FR 66951 (October 30, 2015) (SR-NYSEArca-2015-56) (Approval Order of NYSE Arca Pillar II Filing, adopting rules for Orders and Modifiers and the Retail Liquidity Program); Securities Exchange Act Release Nos. 75467 (July 16, 2015), 80 FR 43515 (July 22, 2015) (Notice) and 76198 (October 20, 2015), 80 FR 65274 (October 26, 2015) (SR-NYSEArca-2015-58) (Approval Order of NYSE Arca Pillar III Filing, adopting rules for Trading Halts, Short Sales, Limit Up-Limit Down, and Odd Lots and Mixed Lots); and Securities Exchange Act Release Nos. 76085 (October 6, 2015), 80 FR 61513 (October 13, 2015) (Notice) and 76869 (January 11, 2016), 81 FR 2276 (January 15, 2016) (Approval Order of NYSE Arca Pillar IV Filing, adopting rules for Auctions). NYSE Arca Equities, Inc., which was a wholly-owned subsidiary of NYSE Arca, has been merged with and into NYSE Arca and as a result, former NYSE Arca Equities rules are now the rules of NYSE Arca. NYSE Arca rules that only apply to its cash equities market have a suffix of "-E" in the rule number. See Securities Exchange Act Release No. 81419 (August 17, 2017), 82 FR 40044 (August 23, 2017) (SR-NYSEArca-2017-40) (Approval Order).

2017.[7] NYSE has filed proposed rule changes to launch trading on Pillar.[8] In each case, NYSE Arca, NYSE American, and NYSE have proposed trading rules that are substantially similar and that are based on the rule numbering framework of NYSE Arca. As described in the rule filings for NYSE American and NYSE, those exchanges proposed specified differences to certain trading rules as compared to NYSE Arca to differentiate their respective trading models. For example, NYSE American has a delay mechanism and does not offer specified order types[9] and NYSE has proposed a parity allocation model.[10]

With Pillar, the Exchange proposes to re-launch trading in all Tape A, Tape B, and Tape C securities on an unlisted trading privileges ("UTP") basis on a fully automated price-time priority allocation model. As proposed, the Exchange's trading rules would be based on the

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7 In connection with the NYSE American implementation of Pillar, NYSE American filed several rule changes. See Securities Exchange Act Release Nos. 79242 (November 4, 2016), 81 FR 79081 (November 10, 2016) (SR-NYSEMKT-2016-97) (Notice and Filing of Immediate Effectiveness of Proposed Rule Change of framework rules); 81038 (June 28, 2017), 82 FR 31118 (July 5, 2017) (SR-NYSEMKT-2016-103) (Approval Order) ("NYSE American ETP Listing Rules Filing"); 80590 (May 4, 2017), 82 FR 21843 (May 10, 2017) (SR-NYSEMKT-2017-01) (Approval Order) ("NYSE American Trading Rules Filing"); 80577 (May 2, 2017), 82 FR 21446 (May 8, 2017) (SR-NYSEMKT-2017-04) (Approval Order) ("NYSE American Market Maker Filing"); 80700 (May 16, 2017), 82 FR 23381 (May 22, 2017) (SR-NYSEMKT-2017-05) (Approval Order) ("NYSE American Delay Mechanism Filing"). NYSE American was previously known as NYSE MKT LLC. See Securities Exchange Act Release No. 80748 (May 23, 2017), 82 FR 24764, 24765 (SR-NYSEMKT-2017-20) (Notice of filing and immediate effectiveness of proposed rule change to change the name of NYSE MKT to NYSE American).

8 See Securities Exchange Act Release Nos. Securities Exchange Act Release Nos. [sic] 76803 (December 30, 2015), 81 FR 536 (January 6, 2016) (SR-NYSE-2015-67) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change); 80214 (March 10, 2017), 82 FR 14050 (March 16, 2017) (SR-NYSE-2016-44) (Approval Order) ("NYSE ETP Listing Rules Filing"); 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 81310 (August 3, 2017), 82 FR 37257 (August 9, 2017) (SR-NYSE-2017-36) (Notice of Filing) ("NYSE Trading Rules Filing").

9 See NYSE American Delay Mechanism Filing, supra, note 7.

10 See NYSE Trading Rules Filing, supra note 8.

rules and trading model of the cash equities platform of NYSE Arca, which operates as a fully automated price-time priority allocation exchange, without any substantive differences. Accordingly, the Exchange proposes rules relating to orders and modifiers, ranking and display of orders, execution and routing of orders, and all other trading functionality that are based on the rules of NYSE Arca. In addition, in specified circumstances, described in more detail below, the Exchange proposes rules based on NYSE American as well, which was a more recent exchange to transition to the Pillar trading platform. In short, the Exchange is not proposing any new or novel rules for how trading would operate on the Exchange.

However, unlike its affiliated exchanges, the Exchange would not be a listing venue. Because the Exchange would trade securities on a UTP basis only, the Exchange proposes to operate in the same manner that NYSE Arca operates with respect to securities that trade on a UTP basis on that exchange. For example, the Exchange would not operate any auctions and therefore would not propose rules to provide for auction functionality on the Exchange. However, the Exchange would make available order types that already exist on NYSE Arca and NYSE American for securities that trade on a UTP basis and that route directly to the primary listing market, including orders designated to participate in an auction on the primary listing market. In addition, because the Exchange would not be a listing venue, the Exchange would not provide for either "lead" or "designated" market makers, which are available on NYSE Arca and NYSE American, respectively, for securities listed on those exchanges only. As with NYSE Arca and NYSE American, proposed Exchange rules would provide that ETP Holders may register as a market maker in securities that trade on a UTP basis on the Exchange. And as with NYSE Arca and NYSE American, Exchange rules would not require a market maker for a

security to trade on a UTP basis on the Exchange. Similar to NYSE American, the Exchange would not operate a retail liquidity program.

While the trading rules for the Exchange's re-launch would be based on the rules of its affiliated exchanges, the Exchange proposes to retain its existing rules relating to membership and ETP Holder conduct. As described in more detail below, the Exchange proposes to renumber such rules and make minor modifications to certain rules. However, the Exchange is not proposing any new rules; all such rules would be either existing Exchange rules that have been renumbered or updated rules based on an existing rule of another exchange.

Because the Exchange is not proposing new or different rules to qualify as a member of the Exchange, for the re-launch, the Exchange proposes to reinstate ETP Holder status[11] using the existing process described in Interpretation and Policies .01 to current Rule 2.5, which sets forth the expedited process for reinstatement as an ETP Holder and to register associated persons when the Exchange re-launched operations in 2015.[12] Pursuant to that rule, approved ETP Holders that were in good standing as of the close of business on May 30, 2014, when the Exchange previously ceased trading operations, had their ETP Holder status reinstated and associated persons registered pursuant to that expedited process.

Because the Exchange proposes to use an established process to reinstate ETP Holder status, the Exchange is not proposing any substantive differences to this rule. The Exchange proposes to amend Interpretation and Policies .01 to Rule 2.5 to replace the date of May 30,

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11 When the Exchange ceased operations, the Exchange terminated the ETP status of all ETP Holders as of the close of business on February 1, 2017. See Termination Filing, supra note 4.

12 See Securities Exchange Act Release No. 75098 (June 3, 2015), 80 FR 32644 (June 9, 2015) (Notice of filing and immediate effectiveness of proposed rule change to establish expedited process to reinstate ETP Holder status).

2014, with the date of February 1, 2017, which was when the Exchange last terminated ETP Holder status. This proposed rule change would therefore provide for the reinstatement of ETP Holders whose status was terminated on February 1, 2017 in the exact same manner that the Exchange reinstated ETP Holders whose status had previously been terminated on May 30, 2014.

In short, for the re-launch of Exchange operations, the trading experience for reinstated ETP Holders on the Exchange would be identical to how trading functions on NYSE Arca for securities trading on a UTP basis. The Exchange proposes to differentiate itself from its affiliated exchanges through a different pricing model, which the Exchange will establish in a separate proposed rule change.[13]

2. Summary of Proposed Rule Changes

In preparation for the re-launch, the Exchange adopted the rule numbering framework of the NYSE Arca rules, which are organized in 14 Rules.[14] This framework replaces the Exchange's current rule numbering framework.

With this filing, and as described in greater detail below, the Exchange proposes to expand on the Framework Filing by making the following changes to its rulebook:

- Adding new rules based on the rules of the Exchange's affiliates relating to:
  - trading securities on an unlisted trading privileges basis (Rules 5 and 8)
  - trading on the Pillar trading platform (Rules 1 and 7)

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13 The Exchange also proposes to file separate proposed rule changes to establish market data products that will be available for the Exchange and related fees.

14 See Securities Exchange Act Release No. 81782 (September 29, 2017), 82 FR 81782 (October 5, 2017) (SR-NYSENat-2017-04) (Notice of Filing and Immediate Effectiveness) ("Framework Filing").

- disciplinary rules (Rule 10)
- administration of the Exchange (Rules 3, 12, and 13)

- Moving and renumbering current rules set forth in Chapters II, III, IV, V, VI and XII to the new framework:
  - ETP Holder[15] membership (Rule 2)
  - order audit trail requirements (Rule 6)
  - rules of fair practice, books and records, supervision, extensions of credit, and trading practices (Rule 11)
- Because Rules 4 and 9 would not include any rules, designating those rules as "Reserved"

In addition, the Exchange proposes to amend Article V, Section 5.01 and 5.8 of the Bylaws.

Because the current rulebook would be replaced with both new and renumbered rules under the new framework, the Exchange proposes to delete current Chapters I – XVI and the rules contained therein.

The following summarizes the proposed rule changes and Part 3, below, provides additional detail regarding the specific proposed rule changes.

a. Bylaws

The Exchange proposes to amend Article V, Sections 5.01 and 5.8 of the Bylaws to conform the Exchange's name for its existing "Appeals Committee" to "Committee for Review." The proposed change would more closely align the Bylaws of the Exchange with the

[15] The Exchange proposes to define the term "ETP Holder" in Rule 1.1 to mean an Exchange-approved holder of an ETP. This proposed rule is based on current Rule 1.5(E)(2).

governing documents of its affiliates, NYSE, NYSE American, and NYSE Arca, which all have "committees for review," rather than appeals committees.

b. Definitions

Rule 1 would set forth definitions that would be used in Exchange rules. As described below, except for membership and conduct rules, the Exchange's proposed definitions are based on the rules for the NYSE Arca or NYSE American cash equities markets, or both. Accordingly, the definitions in proposed Rule 1.1 are based on definitions set forth in NYSE Arca Rule 1.1 and NYSE American Rule 1.1E, as applicable. The definitions set forth in proposed Rule 1.1 would also include current definitions set forth in Chapter I that relate to membership.

c. Membership Rules

To facilitate the expedited process to reinstate ETP Holders for the re-launch of trading operations, the Exchange proposes to retain its existing rules relating to membership and the registration of associated persons, which are currently set forth in Chapter II of the Exchange's rulebook. Consistent with the Framework Filing, the Exchange proposes to move the membership rules to Rule 2, but would retain the current individual rule numbers. As described in greater detail below, the Exchange proposes amendments to certain of those membership rules.

d. Unlisted Trading Privileges Rules

Proposed Rules 5 and 8 would provide for rules to trade all Tape A, Tape B, and Tape C securities, including Exchange Traded Products, on a UTP basis.[16] Because NYSE American is

[16] As described below, the term "Exchange Traded Product" will be defined in Rule 1.1 and would include Equity Linked Notes ("ELNs"), Investment Company Units, Index-Linked Exchangeable Notes, Equity Gold Shares, Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed-Income Index-Linked Securities,

the latest affiliate of the Exchange to add rules for trading securities on a UTP basis on the Pillar trading platform, the Exchange is proposing rules that are based on the rules of NYSE American with only non-substantive and technical differences, as described in greater detail below. As described in NYSE American ETP Listing Rules Filing, the NYSE American rules are based on NYSE Rules 5P and 8P, which in turn are modeled on NYSE Arca Rules 5-E and 8-E.[17] The NYSE American and NYSE rules are differentiated from the NYSE Arca rules because they are intended for trading on a UTP basis only. Those rules therefore include a preamble explaining that such rules are for trading on a UTP basis only and not for listing purposes, even though individual NYSE American and NYSE rules reference listing requirements. The Exchange proposes to follow this established and approved process for its proposed Rules 5 and 8 without any differences. Accordingly, proposed Rules 5 and 8 are based on the approved rules of NYSE American and NYSE, including proposed preambles to such rules explaining that such rules would govern trading on a UTP basis only and would not govern the listing of securities, even though individual rules may include references to listing requirements. In addition, proposed Rules 5 and 8 are based on the approved rules of NYSE, which cross reference options-related rules of NYSE Arca.

Futures-Linked Securities, Multifactor-Index-Linked Securities, Trust Certificates, Currency and Index Warrants, Portfolio Depository Receipts, Trust Issued Receipts, Commodity-Based Trust Shares, Currency Trust Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, Paired Trust Shares, Trust Units, Managed Fund Shares, and Managed Trust Securities.

17 See NYSE American ETP Listing Rules Filing, supra note 7 and NYSE ETP Listing Rules Filing, supra note 8.

e. Consolidated Audit Trail and Order Audit Trail Rules

Rule 6 would set forth rules relating to (i) compliance with the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan"),[18] which are currently set forth in Chapter XIV (the "Compliance Rules"), (ii) new Rule 6.6900 to establish the procedures for resolving potential disputes related to CAT Fees charged to Industry Members ("Fee Dispute Rule"); and (iii) new rules based on NYSE Arca Order Audit Trail System ("OATS") rules relating to order audit trail system requirements. None of these are novel rules and are either renumbered Exchange rules (the Compliance Rules) or new rules based on the approved rules of other exchanges (the Fee Dispute Rule and OATS rules).

f. Trading Rules

Rule 7 would establish rules for trading on the Exchange. As noted above, the Exchange will re-launch on the same trading platform as NYSE Arca's cash equities trading platform, and proposes trading rules based on the rules of NYSE Arca. Rule 7 would include rules based on NYSE Arca Rule 7-E, including general provisions relating to trading, market makers, trading on the Exchange, operation of the routing broker, and the Plan to Implement a Tick Size Pilot Program. Rule 7 would therefore specify all aspects of trading on the Exchange, including the orders and modifiers that would be available and how orders would be ranked, displayed, and executed.

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[18] The CAT NMS Plan is designed to create, implement and maintain a consolidated audit trail ("CAT") that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. Each Participant of the Plan is required to enforce compliance by its Industry Members, as applicable, with the provisions of the Plan, by adopting a Compliance Rule applicable to their Industry Members.

Because the Exchange will not be a listing venue, the Exchange does not propose to have either lead or designated market makers assigned to securities trading on the Exchange. The Exchange therefore does not propose a rule based on NYSE Arca Rule 7.24-E (Designated Market Maker Performance Standards). In addition, because the Exchange would not operate auctions, the Exchange does not propose a rule based on NYSE Arca Rule 7.35-E (Auctions).

g. Disciplinary Rules

Rule 10 would set forth the Exchange's rules relating to investigation, discipline, sanction, and other procedural rules that are modeled on the rules of the Exchange's affiliate NYSE American, which in turn, are modeled on the rules of the Financial Industry Regulatory Authority, Inc. ("FINRA").

h. Rules of Fair Practice, Books and Records, Supervision, Extensions of Credit, and Trading Practice Rules

The Exchange proposes to retain its existing rules relating to rules of fair practice, books and records, supervision, extensions of credit, and trading practices, which are set forth in Chapters III, IV, V, VI, and XII, and move and renumber them to Rule 11. The Exchange believes that retaining existing rules relating to rules of fair practice, books and records, supervision, extensions of credit, and trading practices would facilitate the expedited process for ETP Holders and their associated persons to be reinstated as members because such ETP Holders would not be required to change their internal procedures to be reinstated as ETP Holders of the Exchange. However, because the Exchange has established a new numbering framework, the Exchange proposes to renumber these existing rules under Rule 11, but with sub-numbering that is the same as the existing Exchange rule numbers for such rules. Accordingly, these rules would all begin as "Rule 11", but then would have a sub-number assigned that is identical to the existing rule number. For example, Rule 3.1 would be renumbered as Rule 11.3.1.

The Exchange proposes to rename Rule 11 as "Rules of Fair Practice; Books and Records; Supervision; Extensions of Credit; Trading Practice Rules." Because Rules 4 and 9 will not include any rules, the Exchange proposes to delete the current titles associated with those rules and designate them as "Reserved."

i. Organizational, Administration, Business Conduct, Books and Records and Supervisory Rules

In addition to the above categories of rules, the Exchange proposes rules based on NYSE Arca Rules 3 (Organization and Administration), 12 (Arbitration), and 13 (Liability of Directors and the Exchange).

3. Proposed Rule Changes

Proposed Changes to the Bylaws

The Exchange has an Appeals Committee, which presides over appeals related to disciplinary and adverse action determinations in accordance with the Exchange rules.[19] The Exchange proposes to change the name of the committee, from "Appeals Committee" to "Committee for Review." In order to make the change, the Exchange proposes to replace "Appeals Committee" with "Committee for Review" in Article V, Sections 5.01 and 5.8 of the Bylaws, as well as in the table of contents of the Bylaws. The change would be non-substantive, as the makeup and function of the committee would not change.

The proposed change would conform the Exchange's name for the Appeals Committee to that of its affiliates, NYSE, NYSE American, and NYSE Arca, which all have committees for

[19] See Securities Exchange Release No. 79684 (December 23, 2016), 81 FR 96552 (December 30, 2016) (SR-NSX-2016-16, at 96557 (proposal). See also Securities Exchange Release No. 79902 (January 30, 2017), 82 FR 9258 (February 3, 2017) (SR-NSX-2016-16) (approval).

review, rather than appeals committees.[20] The change would thereby more closely align the Bylaws of the Exchange with the governing documents of its national securities exchange affiliates.

In addition, "Fourth" would be replaced with "Fifth" on the cover page heading, the table of contents, and first page of the Bylaws.

No other changes are proposed to the Bylaws.

Rule 0 – Regulation of the Exchange and ETP Holders

As described in the Framework Filing, Rule 0 establishes the regulation of the Exchange and ETP Holders. As proposed, Rule 0 would provide that:

> The Exchange and FINRA are parties to a Regulatory Services Agreement ("RSA") pursuant to which FINRA has agreed to perform certain regulatory functions of the Exchange on behalf of the Exchange. Exchange Rules that refer to Exchange staff and Exchange departments should be understood as also referring to FINRA staff and FINRA departments acting on behalf of the Exchange pursuant to the RSA, as applicable. Notwithstanding the fact that the Exchange has entered into an RSA with FINRA to perform certain of the Exchange's functions, the Exchange shall retain ultimate legal responsibility for, and control of, such functions.

This proposed rule is based on NYSE Arca Rule 0 without any substantive differences. This Exchange does not currently have a rule that addresses the same topics as proposed Rule 0 and therefore this would be a new Exchange rule.

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[20] See the Eleventh Amended and Restated Operating Agreement of New York Stock Exchange LLC, Article II, Section 2.03(h)(iii); Eleventh Amended and Restated Operating Agreement of NYSE American LLC, Article II, Section 2.03(h)(iii); Amended and Restated NYSE Arca, Inc. Bylaws, Article IV, Section 4.01(a).

Rule 1 - Definitions

As described in the Framework Filing, Rule 1 would establish definitions applicable to trading on the Exchange's Pillar trading platform. Proposed Rule 1.1 includes definitions that are based on NYSE Arca Rule 1.1 definitions, NYSE American Rule 1.1E definitions, and definitions currently set forth in Rule 1.5 in Chapter I of the Exchange's rulebook. Because definitions would be specified in Rule 1.1, the Exchange proposes to delete Chapter I of the current rulebook.

Proposed Rule 1.1 would provide that as used in Exchange rules, unless the context requires otherwise, the terms in proposed Rule 1.1 would have the meanings indicated. This rule is based on NYSE American Rule 1.1E. Throughout proposed Rule 1.1, where applicable, the Exchange proposes non-substantive differences as compared to the NYSE Arca rules to use the term "Exchange" instead of the term "NYSE Arca Marketplace." In addition, the Exchange proposes sub-paragraph numbering for Rule 1.1 that aligns to the alphabetical ordering of the proposed definitions. The Exchange proposes the following definitions:

- Proposed Rule 1.1(a) would define the terms "Authorized Trader" or "AT" to mean a person who may submit orders to the Exchange's Trading Facilities on behalf of his or her ETP Holder. This proposed rule is based on NYSE American Rule 1.1E(g) without any differences.
- Proposed Rule 1.1(b) would define the term "Away Market" to mean any exchange, alternative trading system ("ATS") or other broker-dealer (1) with which the Exchange maintains an electronic linkage and (2) that provides instantaneous responses to orders routed from the Exchange. The Exchange will designate from time to time those ATSs or other broker-dealers that qualify as

Away Markets. This proposed rule is based on NYSE Arca Rule 1.1(f) and NYSE American Rule 1.1E(ff) without any substantive differences.

- Proposed Rule 1.1(c) would define the term "BBO" to mean the best bid or offer that is a protected quotation on the Exchange and that the term "BB" means the best bid on the Exchange and the term "BO" means the best offer on the Exchange. This proposed rule is based on NYSE Arca Rule 1.1(g) and NYSE American Rule 1.1E(h).
- Proposed Rule 1.1(d) would define the term "Board and Board of Directors" to mean the Board of Directors of NYSE National, Inc. This proposed rule is based on NYSE Arca Rule 1.1(h).
- Proposed Rule 1.1(e) would define the term "Core Trading Hours" to mean the hours of 9:30 am Eastern Time through 4:00 pm Eastern Time or such other hours as may be determined by the Exchange from time to time. This proposed rule is based on NYSE Arca Rule 1.1(j) and NYSE American Rule 1.1E(j).
- Proposed Rule 1.1(f) would define the terms "effective national market system plan" and "regular trading hours" to have the meanings set forth in Rule 600(b) of Regulation NMS under the Exchange Act. This proposed rule is based on NYSE Arca Rule 1.1(l) and NYSE American Rule 1.1E(hhh).
- Proposed Rule 1.1(g) would define the term "Eligible Security" to mean any equity security (i) traded on the Exchange pursuant to a grant of unlisted trading privileges under Section 12(f) of the Exchange Act and (ii) specified by the Exchange to be traded on the Exchange or other facility, as the case may be. This

proposed rule is based on NYSE American Rule 1.1E(l) with a non-substantive difference not to reference securities listed on the Exchange.

- Proposed Rule 1.1(h) would define the term "ETP" to refer to an Equity Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange. This proposed rule is based on current NYSE National Rule 1.5(E)(1), which has been renumbered as Rule 1.1(h).
- Proposed Rule 1.1(i) would define the term "ETP Holder" to mean the Exchange-approved holder of an ETP. This proposed rule is based on current NYSE National Rule 1.5(E)(2), which has been renumbered as Rule 1.1(i).
- Proposed Rule 1.1(j) would define the term "Exchange" to mean NYSE National, Inc. This proposed rule is based on NYSE American Rule 1.1E(k).
- Proposed Rule 1.1(k) would define the term "Exchange Act" to mean the Securities Exchange Act of 1934, as amended. This proposed rule is based on NYSE Arca Rule 1.1(q).
- Proposed Rule 1.1(l) would define the term "Exchange Book" to mean the Exchange's electronic file of orders. This proposed rule is based on NYSE American Rule 1.1E(a).
- Proposed Rule 1.1(m) would define the term "Exchange Traded Product" to mean a security that meets the definition of "derivative securities product" in Rule 19b-4(e) under the Exchange Act and would define the term "UTP Exchange Traded Product" to mean an Exchange Traded Product that trades on the Exchange pursuant to unlisted trading privileges. This proposed rule is based on NYSE American Rule 1.1E(bbb).

- Proposed Rule 1.1(n) would define the term "FINRA" to mean the Financial Industry Regulatory Authority, Inc. This proposed rule is based on NYSE Arca Rule 1.1(r).
- Proposed Rule 1.1(o) would define the terms "General Authorized Trader" or "GAT" to mean an authorized trader who performs only non-market making activities on behalf of an ETP Holder. This proposed rule is based on NYSE Arca Rule 1.1(u) and NYSE American Rule 1.1E(p).
- Proposed Rule 1.1(p) would define the term "Good Standing" to mean an ETP Holder who is not in violation of any of its agreements with the Exchange or any of the provisions of the Rules or Bylaws of the Exchange, and who has maintained all of the conditions for approval of the ETP. This proposed rule is based on NYSE Arca Rule 1.1(v) with one substantive difference to exclude references to OTP, OTP Holder or OTP Firm from the proposed rule as NYSE National would not trade any options and therefore would not have OTPs, OTP Holders or OTP Firms on the Exchange.
- Proposed Rule 1.1(q) would define the term "Marketable" to mean, for a Limit Order, an order that can be immediately executed or routed and that Market Orders are always considered marketable. This proposed rule is based on NYSE Arca Rule 1.1(y) and NYSE American Rule 1.1E(u).
- Proposed Rule 1.1(r) would define the term "Market Maker" to mean an ETP Holder that acts as a Market Maker pursuant to Rule 7. This proposed rule is based on NYSE Arca Rule 1.1(z) and NYSE American Rule 1.1E(v).

- Proposed Rule 1.1(s) would define the terms "Market Maker Authorized Trader" or "MMAT" to mean an Authorized Trader who performs market making activities pursuant to Rule 7 on behalf of a Market Maker. This proposed rule is based on NYSE Arca Rule 1.1(aa) and NYSE American Rule 1.1E(w).
- Proposed Rule 1.1(t) would define the term "Market Participant" to include electronic communications networks ("ECN"), dealer-specialists registered with a national securities exchange, and market makers registered with a national securities association. This proposed rule is based on NYSE Arca Rule 1.1(bb).
- Proposed Rule 1.1(u) would define the term "Nasdaq" to mean The Nasdaq Stock Market LLC. This proposed rule is based on NYSE Arca Rule 1.1(cc).
- Proposed Rule 1.1(v) would define the terms "NBBO, Best Protected Bid, Best Protected Offer, and Protected Best Bid and Offer (PBBO)". The term "NBBO" would mean the national best bid or offer. The terms "NBB" would mean the national best bid and "NBO" would mean the national best offer. The terms "Best Protected Bid" or "PBB" would mean the highest Protected Bid, and "Best Protected Offer" or "PBO" would mean the lowest Protected Offer, and the term "Protected Best Bid and Offer" ("PBBO") would mean the Best Protected Bid and the Best Protected Offer. This proposed rule is based on NYSE Arca Rule 1.1(dd) and NYSE American Rule 1.1E(dd).
- Proposed Rule 1.1(w) would define the term "NMS Stock" to mean any security, other than an option, for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan. This proposed rule is based on NYSE Arca Rule 1.1(ee) and NYSE American Rule 1.1E(ddd).

- Proposed Rule 1.1(x) would define the term "NYSE National" to have the same meaning as the term "Exchange" as that term is defined in proposed Rule 1.1. This proposed rule is based on NYSE Arca Rule 1.1(i) [sic], but with reference to "NYSE National" instead of "NYSE Arca."
- Proposed Rule 1.1(y) would define the term "NYSE National Marketplace" to mean the electronic securities communications and trading facility of the Exchange through which orders are processed or are consolidated for execution and/or display. This proposed rule is based on NYSE American Rule 1.1E(e).
- Proposed Rule 1.1(z) would define the term "Person" to mean a natural person, corporation, partnership, limited liability company, association, joint stock company, trustee of a trust fund, or any organized group of persons whether incorporated or not. This proposed rule is based on current NYSE National Rule 1.5(P)(1), which has been renumbered as Rule 1.1(z) without any changes.
- Proposed Rule 1.1(aa) would define the terms "Person Associated with an ETP Holder," [sic] Associated Person of an ETP Holder" or "Associated Person" to mean any partner, officer, director, or branch manager of an ETP Holder (or any Person occupying a similar status or performing similar functions), any Person directly or indirectly controlling, controlled by, or under common control with an ETP Holder, or any employee of such ETP Holder, except that any Person Associated with an ETP Holder whose functions are solely clerical or ministerial shall not be included in the meaning of such terms. This proposed rule is based on current NYSE National Rule 1.5(P)(2), which has been renumbered as Rule 1.1(aa) with a non-substantive difference to add the short-hand definition of

"Associated Person" to mean the same thing as "Person Associated with an ETP Holder."

- Proposed Rule 1.1(bb) would define the term "Principal" to mean any Person Associated with an ETP Holder actively engaged in the management of the ETP Holder's securities business, including supervision, solicitation, conduct of the ETP Holder's business, or the training of Authorized Traders and Persons Associated with an ETP Holder for any of these functions and that such Persons include Sole Proprietors, Officers, Partners, and Directors of Corporations. This proposed rule is based on current NYSE National Rule 1.5(P)(3), which has been renumbered as Rule 1.1(bb) with a non-substantive difference to change "shall include" to "include."
- Proposed Rule 1.1(cc) would define the term "Principal – Financial and Operations" to mean a Person Associated with an ETP Holder whose duties include: final approval and responsibility for the accuracy of financial reports submitted to any duly established securities industry regulatory body; final preparation of such reports; supervision of individuals who assist in the preparation of such reports; supervision of and responsibility for individuals who are involved in the actual maintenance of the ETP Holder's books and records from which such reports are derived; supervision and/or performance of the ETP Holder's responsibilities under all financial responsibility rules promulgated pursuant to the provisions of the Act; overall supervision of and responsibility for the individuals who are involved in the administration and maintenance of the ETP Holder's back office operations; or any other matter involving the financial

and operational management of the ETP Holder. This proposed rule is based on current NYSE National Rule 1.5(P)(4), which has been renumbered as Rule 1.1(cc) without any changes.

- Proposed Rule 1.1(dd) would define the term "Protected Bid" or "Protected Offer" to mean a quotation in an NMS stock that is (i) displayed by an Automated Trading Center; (ii) disseminated pursuant to an effective national market system plan; and (iii) an Automated Quotation that is the best bid or best offer of a national securities exchange or the best bid or best offer of a national securities association. The term "Protected Quotation" would mean a quotation that is a Protected Bid or Protected Offer. For purposes of the foregoing definitions, the terms "Automated Trading Center," "Automated Quotation," "Manual Quotation," "Best Bid," and "Best Offer," would have the meanings ascribed to them in Rule 600(b) of Regulation NMS under the Securities Exchange Act. This proposed rule is based on NYSE Arca Rule 1.1(ss) and NYSE American Rule 1.1E(eee) without any substantive differences.
- Proposed Rule 1.1(ee) would define the term "Security" and "Securities" to mean any security as defined in Rule 3(a)(10) under the Exchange Act, provided, that for purposes of Rule 7, such term would mean any NMS stock. This proposed rule is based on NYSE Arca Rule 1.1(vv) and NYSE American Rule 1.1E(rr).
- Proposed Rule 1.1(ff) would define the term "Securities Trader" to mean any Person engaged in the purchase or sale of securities or other similar instruments for the account of an ETP Holder with which such Person is associated, as an employee or otherwise, and who does not transact any business with the public.

This proposed rule is based on current NYSE National Rule 1.5(S)(1), which has been renumbered as Rule 1.1(ff) without any changes.

- Proposed Rule 1.1(gg) would define the term "Securities Trader Principal" to mean a Person who has become qualified and registered as a Securities Trader and passes the General Securities Principal qualification examination. Each Principal with responsibility over securities trading activities on the Exchange shall become qualified and registered as a Securities Trader Principal. This proposed rule is based on current NYSE National Rule 1.5(S)(2), which has been renumbered as Rule 1.1(gg) without any changes.
- Proposed Rule 1.1(hh) would define the term "Self-Regulatory Organization" and "SRO" to have the same meaning as set forth in the provisions of the Exchange Act relating to national securities exchanges. This proposed rule is based on NYSE Arca Rule 1.1(ww) and NYSE American Rule 1.1E(ss) without any substantive differences.
- Proposed Rule 1.1(ii) would define the term "Trade-Through" to mean the purchase or sale of an NMS stock during regular trading hours, either as principal or agent, at a price that is lower than a Protected Bid or higher than a Protected Offer. This proposed rule is based on NYSE Arca Rule 1.1(bbb) and NYSE American Rule 1.1E(fff) without any substantive differences.
- Proposed Rule 1.1(jj) would define the term "Trading Center" to mean, for purposes of Rule 7, a national securities exchange or a national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker or any other broker or dealer that

executes orders internally by trading as principal or crossing orders as agent. For purposes of this definition, the terms "SRO trading facility," "alternative trading system," "exchange market maker" and "OTC market maker" would have the meanings ascribed to them in Rule 600(b) of Regulation NMS under the Exchange Act. This proposed rule is based on NYSE Arca Rule 1.1(ccc) without any substantive differences.

- Proposed Rule 1.1(kk) would define the term "Trading Facilities" to mean any and all electronic or automatic trading systems provided by the Exchange to ETP Holders. This proposed rule is based on NYSE American Rule 1.1E(xx) without any differences.
- Proposed Rule 1.1(ll) would define the term "UTP Security" to mean 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. This proposed rule is based on NYSE Arca Rule 1.1(iii) and NYSE American Rule 1.1E(ii) without any substantive differences.
- Proposed Rule 1.1(mm) would define the term "UTP Listing Market" to mean the primary listing market for a UTP Security. This proposed rule is based on NYSE Arca Rule 1.1(ggg) and NYSE American Rule 1.1E(jj) without any substantive differences.
- Proposed Rule 1.1(nn) would define the term "UTP Regulatory Halt" to mean a trade suspension, halt, or pause called by the UTP Listing Market in a UTP Security that requires all market centers to halt trading in that security. This

proposed rule is based on NYSE Arca Rule 1.1(hhh) and NYSE American Rule 1.1E(kk) without any substantive differences.

Rule 2 – ETP Holders of the Exchange

The Exchange proposes to retain its existing rules relating to membership, which are currently set forth in Chapter II. Consistent with the Framework Filing, the Exchange proposes to move those rules, as amended, to new Rule 2. For consistency and clarity, the Exchange proposes to retain the same individual rule numbers. When moving the rules, the Exchange proposes non-substantive differences to (i) use a different sub-paragraph numbering format;[21] (ii) use the term "Commentary" instead of "Interpretation and Policies;" and (iii) update internal rule cross references to replace references to the term "Chapter" with the term "Rule."[22]

Subject to these non-substantive differences, the Exchange proposes to move Rules 2.1 (Rights, Privileges and Duties of ETP Holders), 2.2 (Obligations of ETP Holders and the Exchange), 2.3 (ETP Holder Eligibility), 2.4 (Restrictions), 2.5 (Application Procedures for an ETP Holder), 2.6 (Revocation of an ETP or an Association with an ETP Holder), 2.7 (Voluntary Termination of Rights as an ETP Holder), 2.8 (Transfer or Sale of an ETP), and 2.9 (Dues, Assessments and Other Charges) to Rule 2 without any additional differences.

In addition to the non-substantive differences described above, the Exchange proposes to amend Commentary .01 to Rule 2.5 to facilitate the efficient reinstatement of ETP Holders by replacing the date "May 30, 2014" with the date "February 1, 2017," which was when the Exchange ceased operations and terminated ETP Holder status. This amendment will allow the

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21 Current Exchange rules use an "(a)(i)(A)(1)" sub-paragraph numbering convention and the Exchange proposes to use an "(a)(1)(A)(i)" sub-paragraph numbering convention.

22 See proposed Rules 2.5(c) (replacing "Chapter" with "Rule") and 2.5(d) and (e)(2) (replacing "Chapter X" with "Rule 10").

use of the existing expedited process – without any substantive changes – to facilitate the reinstatement, subject to certain conditions, of former ETP Holders of the Exchange and to register Associated Persons. The Exchange proposes non-substantive differences to update the rule cross references in Commentary .01 from Rule 2.4 to Rule 2.2.[23]

The Exchange proposes to delete the following rules currently set forth in Chapter II and not move them to Rule 2:

- Rule 2.10 (No Affiliation between Exchange and any ETP Holder). Proposed Rule 3.9, described in greater detail below, would establish the permitted relationships between ETP Holders and Exchange affiliates. Accordingly, current Rule 2.10 is not necessary. The Exchange proposes to designate Rule 2.10 as "Reserved."
- Rule 2.11 (NSX Securities LLC). The Exchange will no longer use NSX Securities LLC as a routing broker and is now affiliated with Archipelago Securities LLC. Proposed Rule 7.45, described in greater detail below and which is based on NYSE Arca Rule 7.45-E, would establish rules for both the inbound and outbound routing of orders. The Exchange proposes to designate Rule 2.11 as "Reserved."
- Rule 2.12 (Back-Up Order Routing Services). By its terms, current Rule 2.12 expired on September 30, 2008. Moreover, proposed Rule 7.45 would address all

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23 See Securities Exchange Act Release No. 78676 (August 25, 2016), 81 FR 60083 (August 31, 2016) (SR-NSX-2016-07) (Notice of filing of amendments to Chapter II, including moving rule text relating to requirements for Associated Persons from Rule 2.4 to Rule 2.2).

routing services on behalf of the Exchange. The Exchange proposes to designate Rule 2.12 as "Reserved."

The Exchange proposes that Rule 2.13 (Exchange Backup Systems and Mandatory Testing) would address mandatory participation in the testing of backup systems. To maintain consistency across all exchanges operated by NYSE Group, the Exchange proposes that Rule 2.13 would be based on NYSE Arca Rule 2.27 instead of current Rule 2.13 (Mandatory Participation in Testing of Backup Systems), with the following minor substantive differences to reflect the differences between the Exchange and NYSE Arca. First, because the Exchange does not have any OTP Holders, proposed Rule 2.13 would not reference OTP Holders. Second, because the Exchange would not have lead market makers, proposed Rule 2.13 would not include text based on Rule 2.27(c). The Exchange would delete current Rule 2.13 in its entirety.

The Exchange also proposes new Rule 2.18 (Activity Assessment Fees) to be included in Rule 2, which is based on NYSE Arca Rule 2.18 and NYSE American Rule 2.17E. Proposed Rule 2.18 would provide authority for the Exchange to impose fees, assessments, and other charges, for example, in connection with securities transaction fees required under Section 31 of the Act.[24] The Exchange proposes to delete current Rule 16.1, which similarly addresses the Exchange's authority to prescribe dues, fees, assessments and other charges.

To maintain rule numbering consistency, the Exchange proposes to add Rules 2.14 through and including Rule 2.17 and designate each rule "Reserved."

Because Rule 2 would set forth rules on membership, the Exchange proposes to delete the rules in Chapter II in their entirety. In addition, because Rule 2 would include rules

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[24] The Exchange does not propose rule text based on Commentary .01 to NYSE Arca 2.18, which has expired on its own terms.

authorizing the Exchange to prescribe dues, fees, assessments, and other charges, the Exchange proposes to delete the rules in Chapter XVI in their entirety.

Rule 3 – Organization and Administration

The Exchange proposes new Rule 3 titled "Organization and Administration," which would include specified rules set forth in NYSE Arca Rule 3 and NYSE Arca Rule 13.1.

To maintain the same rule numbers as NYSE Arca, proposed Rules 3.1 through 3.7 would be designated as "Reserved".[25]

Proposed Rule 3.8 (Liability for Payment) provides that an ETP Holder failing to pay any assessments, dues or other charges to the Exchange for thirty days after the same shall become payable, may be suspended by the Exchange in accordance with Rule 10.9555, except that failure to pay any fine levied in connection with a disciplinary action would be governed by Rule 10.8320. The proposed Rule is based on NYSE Arca Rule 3.8 (Liability for Payment) with non-substantive differences to reference the applicable disciplinary rules on the Exchange, described in greater detail below.

Proposed Rule 3.9 (Certain Relationships) would preclude an ETP Holder from being affiliated with NYSE Group, Inc., unless the Commission otherwise approves. The proposed

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[25] NYSE Arca Rules 3.1 (Overview), 3.2 (Exchange Committees), 3.3 (Board Committees) relate to board committees, which are described in the Exchange's Fourth Amended and Restated By-Laws, which is available here: https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE_National_Inc_Fourth_Amended_and_Restated_Bylaws.pdf. Proposed Rules 3.4 and 3.5 would be designated as "Reserved" like the analogous NYSE Arca rules. NYSE Arca Rule 3.6 authorizes the exchange to enter into surveillance agreements with domestic and foreign SROs, although it does not cover domestic agencies and foreign regulators. As discussed below, proposed Rule 8210(b) would authorize Exchange staff to enter into regulatory cooperation agreements with a domestic federal agency or subdivision thereof, a foreign regulator, or a domestic or foreign SRO. The authority to adopt and prescribe fines in NYSE Arca Rule 3.7 (Dues, Fees and Charges) would be encompassed in proposed Rule 2.9 (Dues, Assessments and Other Charges).

Rule further provides that any failure by an ETP Holder to comply with Rule 3.9 would subject it to the disciplinary actions prescribed by Rule 10.9555, which provides for non-summary suspensions and other actions. The proposed Rule is based on NYSE Arca Rule 3.10 (Certain Relationships), with non-substantive differences to reference the applicable disciplinary rule on the Exchange, described in greater detail below. As discussed above, proposed Rule 3.9 obviates the need for current Rule 2.10 to be maintained.

Proposed Rule 3.10 (Notice of Expulsion or Suspension) would require an ETP Holder to provide prompt written notification to the Exchange whenever such ETP Holder is expelled or suspended from any SRO, encounters financial difficulty or operating inadequacies, or [sic] fails to perform contracts or becomes insolvent. The proposed Rule would further require an ETP Holder to give prompt written notification to the Exchange with respect to the expulsion or suspension of any ETP Holder or any other Associated Person of such ETP Holder by any SRO. The proposed Rule is based on NYSE Arca Rule 13.1 without any differences.[26]

Proposed Rule 3.11 (Fingerprint-Based Background Checks of Exchange Employees and Others) would establish the Exchange's requirements for fingerprint-based background checks of Exchange employees and others. The proposed rule is based on NYSE Arca Rule 3.11 with non-substantive differences to use the term "will" instead of "shall" and number the Commentary as ".01" instead of ".10."

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[26] As discussed below, proposed Rule 10.9555 would govern suspensions, cancellations, bars, limitations and prohibitions on access to the Exchange's services for failure to meet the eligibility or qualification standards or prerequisites for access to services offered by the Exchange.

Rule 5 - Securities Traded and Rule 8 - Trading of Certain Exchange Traded Products

Rules 5 and 8 would set forth the Exchange's rules to: (1) Allow the Exchange to trade, pursuant to UTP, any NMS Stock listed on another national securities exchange, and (2) establish rules for the trading pursuant to UTP of certain Exchange Traded Products. Since NYSE American was the most recent exchange in the NYSE Group to add rules for the trading pursuant to UTP of Exchange Traded Products, the Exchange proposes rules that are based on current NYSE American Rules 5E and 8E.[27]

As noted above, because the Exchange will not be a listing venue, the Exchange proposes to include introductory language to both Rules 5 and 8 that would provide that these rules would apply only to the trading pursuant to UTP of Exchange Traded Products, and would not apply to the listing of Exchange Traded Products on the Exchange. The Exchange is proposing this language to clarify that the rules incorporated in Rules 5 and 8 should not be interpreted to be either initial or continued listing requirements of the Exchange, but rather, requirements that pertain solely to the trading of Exchange Traded Products pursuant to UTP on the Pillar platform. Accordingly, references to securities listed on the Exchange in proposed Rule 5 and 8 are not designed to be listing standards. Rather, similar to NYSE American Rules 5 and 8 and NYSE Rules 5P and 8P, proposed Rules 5 and 8 are intended only to address trading of securities on a UTP basis. The Exchange therefore proposes rules that are virtually identical to established and approved rules of NYSE American and NYSE that are for the same purpose.

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[27] See NYSE American ETP Listing Rules Filing, supra note 7. The proposed rules are also based on NYSE Rules 5P and 8P. See NYSE ETP Listing Rules Filing, supra note 8. Both the NYSE American and NYSE rules are modeled on NYSE Arca Rules 5-E and 8-E.

To further clarify this point, proposed Rule 5.1(a)(1) would provide that the Exchange would not list any Exchange Traded Products unless it filed a proposed rule change under Section 19(b)(2)[28] [sic] under the Act. Therefore, the provisions of proposed Rules 5 and 8 described below, which 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. This change would require the Exchange to add rules relating to the independence of compensation committees and their advisors [sic].[29]

In addition, the Exchange proposes the following non-substantive differences in its proposed rules as compared to the NYSE American Rules 5E and 8E that would be applied throughout Rules 5 and 8 (collectively, the "General Definitional Term Changes"):

- Because the Exchange uses the term "Commentary" to refer to commentaries to its Rules, the Exchange proposes to substitute this term where "Supplementary Material" is used in the rules of NYSE American.
- Because the Exchange uses the defined term "Exchange Act" to refer to the Securities Exchange Act of 1934, as amended, the Exchange proposes to substitute this defined term where "Securities Exchange Act of 1934," "Securities

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28 15 U.S.C. 78s(b)(2).

29 On June 20, 2012, the Commission adopted Rule 10C-1 to implement Section 10C of the Act, as added by Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Rule 10C-1 under the Act directs each national securities exchange to prohibit the listing of any equity security of an issuer, with certain exceptions, that does not comply with the rule's requirements regarding compensation committees of listed issuers and related requirements regarding compensation advisers. See, CFR 240.10C-1; Securities Act Release No. 9199, Securities Exchange Act Release No. 64149 (March 30, 2011), 76 FR 18966 (April 6, 2011) and Securities Exchange Act Release No. 67220 (June 20, 2012), 77 FR 38422 (June 27, 2012).

Act of 1934," "Securities Exchange Act," or "1934 Act" is used in the rules of NYSE American.

- Because the Exchange does not need to distinguish these proposed rules from other rules with the same numbering on the Exchange, the Exchange will not denote these proposed rules with the letter "E" at the end of each rule.
- Because the Exchange's rules regarding the production of books and records would be described in proposed Rule 11.4.1[30] the Exchange proposes to refer to Rule 11.4.1 wherever NYSE American Rule 440-Equities is referenced in the rules of NYSE American.
- Because the Exchange proposes to define the term "Exchange Traded Product" in Rule 1.1, described above, to use this term instead of "Derivative Securities Product."

Because Rules 5 and 8 would address all rules relating to trading securities on a UTP basis, the Exchange proposes to delete the rules in Chapter XV in their entirety.

Rule 5 – Securities Traded

The Exchange proposes that Rule 5 would include rules based on NYSE American Rule 5E. Rule 5 would establish the Exchange's authority to extend UTP to all Tape A, B, and C securities. These proposed rules would also permit the Exchange to trade pursuant to UTP the following: ELNs, Investment Company Units, Index-Linked Exchangeable Notes, Equity Gold Shares, Equity Index Linked Securities, Commodity-Linked Securities, Currency-Linked

30 In addition to the existing obligations under the Exchange's rules regarding the production of books and records, proposed Rule 11.4.1 provides restrictions on ETP Holder activities pertaining to books and records.

Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities, Multifactor Index-Linked Securities, and Trust Certificates.

Proposed Rule 5.1(a)

Proposed Rule 5.1(a)(1) would provide that the Exchange may extend UTP to any security that is an NMS Stock (as defined in Rule 600 to Regulation NMS under the Exchange Act) that is listed on another national securities exchange or with respect to which UTP may otherwise be extended in accordance with Section 12(f) of the Exchange Act.[31] This proposed text is identical to NYSE American Rule 5.1E(a), NYSE Rule 5.1(a), and Rules 14.1 of both Cboe BYX Exchange, Inc. and Cboe EDGA Exchange, Inc. ("EDGA"). The proposed rule is also substantially similar to NYSE Arca Rule 5.1-E(a).[32]

Proposed Rule 5.1(a)(2) would establish rules for trading of UTP Exchange Traded Products, which are defined in Rule 1.1 (described above). Specifically, the requirements in subparagraphs (A)-(F) of proposed Rule 5.1(a)(2) would apply to UTP Exchange Traded Products traded on the Exchange. Proposed Rule 5.1(a)(2) and its sub-paragraphs are based on NYSE American Rule 5.1E(a)(2) and its sub-paragraphs and NYSE Rule 5.1(a)(2) and its subparagraphs with a non-substantive difference to use the defined term of "UTP Exchange Traded Product," which is defined in Rule 1.1.

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31 15 U.S.C. 78l(f). See also 17 CFR 242.600.

32 See NYSE Arca Rule 5.1-E(a)(1) and Securities Exchange Act Release No. 67066 (May 29, 2012), 77 FR 33010 (June 4, 2012) (SR-NYSEArca-2012-46). See also Cboe BZX Exchange, Inc. ("BZX") Rule 14.11 and Securities Exchange Act Release No. 58623 (September 23, 2008), 73 FR 57169 (October 1, 2008) (SR-BATS-2008-004); Nasdaq PHLX LLC ("Phlx") Rule 803(o) and Securities Exchange Act Release No. 57806 (May 9, 2008), 73 FR 28541 (May 16, 2008) (SR-Phlx-2008-34); and Nasdaq ISE, LLC ("ISE") Rule 2101 and Securities Exchange Act Release No. 57387 (February 27, 2008), 73 FR 11965 (March 5, 2008) (SR-ISE-2007-99).

Under proposed Rule 5.1(a)(2)(A), the Exchange would file a Form 19b-4(e) with the Commission with respect to each Exchange Traded Product[33] the Exchange trades pursuant to UTP within five days after commencement of trading.

Proposed Rule 5.1(a)(2)(B) would provide that the Exchange would distribute an information circular prior to the commencement of trading in an Exchange Traded Product that generally would include the same information as the information circular provided by the listing exchange, including (a) the special risks of trading the Exchange Traded Product, (b) the Exchange's rules that will apply to the Exchange Traded Product, including Rules 8.4 and 8.5,[34] and (c) information about the dissemination of value of the underlying assets or indices.

Under proposed Rule 5.1(a)(2)(D), the Exchange would halt trading in a UTP Exchange Traded Product as provided for in proposed Rule 7.18. The Exchange proposes different rule text from NYSE American Rule 5.1(a)(2)(D) to streamline its rules and eliminate duplication in requirements relating to the halting of trading of UTP Exchange Traded Products, which are addressed in proposed Rule 7.18, described below.

Proposed Rule 5.1(a)(2)(F) provides that the Exchange's surveillance procedures for Exchange Traded Products traded on the Exchange pursuant to UTP would be similar to the procedures used for equity securities traded on the Exchange and would incorporate and rely upon existing Exchange surveillance systems.

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33 Although Rule 19b-4(e) of the Act defines any type of option, warrant, hybrid securities product or any other security, other than a single equity option or a security futures product, whose value is based, in whole or in part, upon the performance of, or interest in, an underlying instrument, as a "new derivative securities product," the Exchange prefers to refer to these types of products that it will be trading as "exchange traded products," so as not to confuse investors with a term that can be deemed to imply such products are futures or options related.

34 See proposed Rules 8.4 (Account Approval) and 8.5 (Suitability).

Proposed Rules 5.1(a)(2)(C) and (E) would establish the following requirements for ETP Holders that have customers that trade UTP Exchange Traded Products:

- Prospectus Delivery Requirements. Proposed Rule 5.1(a)(2)(C)(i) would remind ETP Holders that they are subject to the prospectus delivery requirements under the Securities Act of 1933, as amended (the "Securities Act"), unless the Exchange Traded Product is the subject of an order by the Commission exempting the product from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940, as amended (the "1940 Act"), and the product is not otherwise subject to prospectus delivery requirements under the Securities Act. ETP Holders would also be required to provide a prospectus to a customer requesting a prospectus.[35]
- Written Description of Terms and Conditions. Proposed Rule 5.1(a)(2)(C)(ii) would require ETP Holders to provide a written description of the terms and characteristics of UTP Exchange Traded Products to purchasers of such securities, not later than the time of confirmation of the first transaction, and with any sales materials relating to UTP Exchange Traded Products.
- Market Maker Restrictions. Proposed Rule 5.1(a)(E) would establish certain restrictions for any ETP Holder registered as a market maker in an Exchange Traded Product listed on the exchange that derives its value from one or more currencies, commodities, or derivatives based on one or more currencies or commodities, or is based on a basket or index composed of currencies or commodities (collectively, "Reference Assets"). Specifically, such an ETP

[35] Proposed Rule 5.1(a)(2)(C)(iii).

> Holder must file with the Exchange and keep current a list identifying all accounts for trading the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives, which the ETP Holder acting as registered market maker may have or over which it may exercise investment discretion.[36] If an account in which an ETP Holder acting as a registered market maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, has not been reported to the Exchange as required by this Rule, an ETP Holder acting as registered market maker in the Exchange Traded Product would be [sic] permitted to trade in the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives. Finally, a market maker could not use any material nonpublic information in connection with trading a related instrument.
>
> Proposed Rule 5.1(b)

As noted above, the terms "Exchange Traded Product" and "UTP Exchange Traded Product" would be defined in Rule 1.1. The Exchange proposes to set forth additional definitions that would be relevant to the rules for the trading pursuant to UTP of the Exchange Traded Products in proposed Rule 5.1(b). Proposed Rule 5.1(b) is based on NYSE American Rule 5.1E(b). To maintain consistency in rule references between the Exchange's proposed rules

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[36] The proposed rule would also, more specifically, require a market maker to file with the Exchange and keep current a list identifying any accounts ("Related Instrument Trading Accounts") for which related instruments are traded (1) in which the market maker holds an interest, (2) over which it has investment discretion, or (3) in which it shares in the profits and/or losses. In addition, a market maker would not be permitted to have an interest in, exercise investment discretion over, or share in the profits and/or losses of a Related Instrument Trading Account that has not been reported to the Exchange as required by the proposed rule.

and NYSE American's rules, the Exchange proposes to Reserve the same subparagraphs in the definitions of proposed Rule 5.1(b) as those that are Reserved in the subparagraphs of NYSE American Rule 5.1E(b).[37]

Proposed Rule 5.2(j)(2) – (j)(7)

The Exchange proposes to add Rules 5.2(j)(2) – (j)(7), which would be substantially identical to NYSE American Rules 5.2E(j)(2)-(j)(7) and substantially similar to NYSE Rules 5.2(j)(2)-(j)(7) and NYSE Arca Rules 5.2-E(j)(2)-(j)(7). These proposed rules would permit the Exchange to trade pursuant to UTP the following:

- ELNs that meet the rules for the trading pursuant to UTP that are contained in proposed Rule 5.2(j)(2);
- Investment Company Units that meet the rules for the trading pursuant to UTP that are contained in proposed Rule 5.2(j)(3);
- Index-Linked Exchangeable Notes that meet the rules for the trading pursuant to UTP that are contained in proposed Rule 5.2(j)(4);
- Equity Gold Shares that meet the rules for the trading pursuant to UTP that are contained in proposed Rule 5.2(j)(5);
- Equity Index Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities that meet the rules for the trading pursuant to UTP that are contained in proposed Rule 5.2(j)(6); and

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37 The Exchange is proposing to designate paragraphs (b)(3), (b)(7), (b)(8), (b)(10), (b)(17) and (b)(19) of proposed Rule 5.1(b) as "Reserved" because they are Reserved in NYSE American Rule 5.1E(b).

- Trust Certificates that meet the rules for the trading pursuant to UTP that are contained in proposed Rule 5.2(j)(7).

The text of these proposed rules is identical to NYSE American Rules 5.2E(j)(2)-5.2(j)(7), other than certain non-substantive and technical differences explained below.

The Exchange proposes to Reserve paragraphs 5.2(a)-(i)[38] and (j)(1),[39] to maintain the same rule numbers as the NYSE American rules with which it conforms.

Proposed Rule 5.2(j)(2) (ELNs)

The Exchange is proposing Rule 5.2(j)(2) to provide rules for the trading pursuant to UTP of ELNs, so that they may be traded on the Exchange pursuant to UTP. Other than the

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38 NYSE American adopted rules for the trading pursuant to UTP of ETPs that are substantially identical to the rules of NYSE Arca. See NYSE American ETP Listing Rules Filing, supra note 7. In order to maintain the same rule numbers as NYSE Arca, NYSE American reserved paragraphs 5.2E(a)-(i) as these rules pertain to specific listing criteria for NYSE Arca and not trading ETPs pursuant to UTP, and NYSE American was not proposing similar rules at the time. Because the Exchange will not be a listing venue, the Exchange similarly proposes to designate these rules as "Reserved."

NYSE Arca Rule 5.2-E(a) pertains to applications for admitting securities to list on NYSE Arca and NYSE Arca Rule 5.2-E(b) pertains to NYSE Arca's unique two-tier listing structure.

NYSE Arca Rules 5.2-E(c)-(g) relate to listing standards for securities that are not ETPs, and NYSE American did not propose rule changes related to such securities.

NYSE Arca Rule 5.2-E(h) pertains to Unit Investment Trusts ("UITs"). NYSE American trades UITs pursuant to UTP under proposed Rule 5.2(j)(3) (Investment Company Units) or proposed Rule 8.100 (Portfolio Depository Receipts), and the Exchange is proposing the same.

39 NYSE American added rules for the trading pursuant to UTP of ETPs that are substantially identical to the rules of NYSE Arca. See id. and NYSE American ETP Listing Rules Filing, supra note 7. In order to maintain the same rule numbers as NYSE Arca, NYSE American reserved paragraph 5.2E(j)(1) as NYSE Arca Rule 5.2-E(j)(1) pertains to "Other Securities" that are not otherwise covered by the requirements contained in the other listing rules of NYSE Arca. As NYSE American added only the rules that were necessary for the exchange to trade ETPs pursuant to UTP, NYSE American did not propose a rule comparable to NYSE Arca Rule 5.2-E(j)(1) at that time. The Exchange similarly does not propose rules comparable to that NYSE Arca rule.

General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 5.2E(j)(2).[40]

Proposed Rule 5.2(j)(3) (Investment Company Units)

The Exchange proposes Rule 5.2(j)(3) to establish rules for the trading pursuant to UTP of investment company units, so that they may be traded on the Exchange pursuant to UTP. Other than the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 5.2E(j)(3).[41]

Proposed Rule 5.2(j)(4) (Index-Linked Exchangeable Notes)

The Exchange proposes Rule 5.2(j)(4) to establish rules for the trading pursuant to UTP of index-linked exchangeable notes, so that they may be traded on the Exchange pursuant to UTP.

In addition to the General Definitional Term Changes described above, the Exchange is proposing the following non-substantive differences between this proposed rule and NYSE American Rule 5.2E(j)(4):[42]

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40 See NYSE American Rule 5.2E(j)(2), which is based on NYSE Arca Rule 5.2-E(j)(2). See also NYSE American ETP Listing Rules Filing, supra note 7 and Securities Exchange Act Release Nos. 50319 (September 7, 2004), 69 FR 55204 (September 13, 2004) (SR-PCX-2004-75); 56924 (December 7, 2007), 72 FR 70918 (December 13, 2007) (SR-NYSEArca-2007-98); 58745 (October 7, 2008), 73 FR 60745 (October 14, 2008) (SR-NYSEArca-2008-94).

41 See NYSE American Rule 5.2E(j)(3), which is based on NYSE Arca Rule 5.2-E(j)(3). See also NYSE American ETP Listing Rules Filing, supra note 7 and Securities Exchange Act Release Nos. 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR-PCX-2001-14) and 40603 (November 3, 1998), 63 FR 59354 (November 3, 1998) (SR-PCX-98-29).

42 See NYSE American Rule 5.2E(j)(4), which is based on NYSE Arca Rule 5.2-E(j)(4). See also NYSE American ETP Listing Rules Filing, supra note 7 and Securities Exchange Act Release No. 49532 (April 7, 2004), 69 FR 19593 (April 13, 2004) (SR-PCX-2004-01).

- To qualify for listing and trading under NYSE American Rule 5.2E(j)(4), an index-linked exchangeable note and its issuer must meet the criteria in NYSE Arca Rule 5.2-E(j)(1) (Other Securities), except that the minimum public distribution will be 150,000 notes with a minimum of 400 public note-holders, except, if traded in thousand dollar denominations then there is no minimum public distribution and number of holders.

  Because neither NYSE American nor the Exchange have and are not proposing a rule for "Other Securities" comparable to NYSE Arca Rule 5.2-E(j)(1), the Exchange, like NYSE American, proposes to reference NYSE Arca Rule 5.2-E(j)(1) in subparagraphs (a) and (c) of proposed Rule 5.2(j)(4) in establishing the criteria that an issuer and issue must satisfy.[43]

- To qualify for listing and trading under NYSE American Rule 5.2E(j)(4), an index to which an exchangeable note is linked and its underlying securities must meet (i) the procedures and criteria set forth in Supplementary Material .03 to NYSE American Rule 901C;[44] or (ii) the criteria set forth in subsections (C) and (D) of NYSE American Rule 5.2E(j)(2), the index concentration limits set forth in

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43 The Exchange will monitor for any changes to the rules of NYSE Arca, and will amend its rules accordingly to conform to the rules of NYSE Arca. The Exchange notes that it is proposing to cross-reference to the rules of an affiliate of the Exchange, which will facilitate monitoring for changes to such rules. The Exchange also notes that it is proposing to follow the established and approved rules of NYSE, which also reference the rules of NYSE Arca. See NYSE ETP Listing Rules Filing, supra note 8.

44 Supplementary Material .03 to NYSE American Rule 901C is substantially identical to NYSE Arca Rule 5.13-O (NYSE Arca Rule 5.13-O is cross-referenced in NYSE Arca Rule 5.2-E(j)(4), on which NYSE American Rule 5.2E(j)(4) was originally based; see NYSE American ETP Listing Rules Filing, supra note 7, and sets forth criteria for narrow-based and micro narrow-based indexes on which an options contract may be listed without filing a proposed rule change under Section 19(b) of the Exchange Act.

Supplementary Material .03(a)(7) to NYSE American Rule 901C, and Supplementary Material .03(b)(iii) to NYSE American Rule 901C insofar as it relates to Supplementary Material .03(a)(7) to NYSE American Rule 901C. Because the Exchange does not plan to trade options at this time and is not proposing rules for listing of index options contracts, the Exchange is proposing to refer to NYSE Arca Rule 5.13-O in proposed Rule 5.2(j)(4)(d)(i) and (ii), which has the same requirements as NYSE American Rule 901C. The Exchange would apply the criteria set forth in NYSE Arca Rule 5.13-O in determining whether an index underlying an index-linked exchangeable note satisfies the requirements of Rule 5.2(j)(4)(d).[45]

The Exchange proposes to reference NYSE Arca Rule 5.13-O because the Exchange does not have options trading rules. In referencing such rules, the Exchange proposes to follow the established and approved rules of NYSE Rule 5.2(j)(4), which also references NYSE Arca Rule 5.13-O.[46]

Proposed Rule 5.2(j)(5) (Equity Gold Shares)

The Exchange is proposing Rule 5.2(j)(5) to provide rules for the trading pursuant to UTP of equity gold shares, so that they may be traded on the Exchange pursuant to UTP. Other than the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 5.2E(j)(5).[47]

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45 See supra note 43.

46 See NYSE ETP Listing Rules Filing, supra note 8.

47 See NYSE American Rule 5.2E(j)(5), which is based on NYSE Arca Rule 5.2-E(j)(5). See also NYSE American ETP Listing Rules Filing, supra note 7 and Securities Exchange Act Release No. 51245 (February 23, 2005), 70 FR 10731 (March 4, 2005) (SR-PCX-2004-117).

Proposed Rule 5.2(j)(6) (Index-Linked Securities)

The Exchange is proposing Rule 5.2(j)(6) to provide rules for the trading pursuant to UTP of equity index-linked securities, so that they may be traded on the Exchange pursuant to UTP.

In addition to the General Definitional Term Changes described above, the Exchange is proposing the following non-substantive changes between this proposed rule and NYSE American Rule 5.2E(j)(6):[48]

- To qualify for listing and trading under NYSE American Rule 5.2E(j)(6), both the issue and issuer of an index-linked security must meet the criteria in NYSE Arca Rule 5.2-E(j)(1) (Other Securities), with certain specified exceptions. Because neither NYSE American nor the Exchange have and are not proposing a rule for "Other Securities" comparable to NYSE Arca Rule 5.2-E(j)(1), the Exchange, like NYSE American, proposes to reference NYSE Arca Rule 5.1-E(j)(1) in proposed Rule 5.2(j)(6)(A)(a) establishing the criteria that an issue and issuer must satisfy.[49]
- The listing standards for Equity Index-Linked Securities in NYSE American Rule 5.2E(j)(6) reference NYSE American Rule 915 in describing the criteria for

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48 See NYSE American Rule 5.2E(j)(6), which is based on NYSE Arca Rule 5.2-E(j)(6). See also NYSE American ETP Listing Rules Filing, supra note 7 and Securities Exchange Act Release Nos. 54231 (July 27, 2006), 71 FR 44339 (August 4, 2006) (SR-NYSEArca-2006-19); 59332 (January 30, 2009), 74 FR 6338 (February 6, 2009) (SR-NYSEArca-2008-136); and 52204 (August 3, 2005), 70 FR 46559 (August 10, 2005) (SR-PCX-2005-63).

49 See supra note 43.

securities that compose 90% of an index's numerical value and at least 80% of the total number of components.

Because the Exchange does not plan to trade options at this time and is not proposing rules for establishing the criteria for underlying securities of put and call options contracts described in NYSE American Rule 915,[50] the Exchange is proposing to refer to NYSE Arca Rule 5.3-O in paragraph (B)(I)(1)(b)(iv) of proposed Rule 5.2(j)(6), to establish the initial listing criteria that an index must meet to trade pursuant to UTP. The Exchange would apply the criteria set forth in NYSE Arca Rule 5.3-O in determining whether an index's numerical value meets the then current criteria for standardized option trading.[51]

The Exchange proposes to reference NYSE Arca Rule 5.3-O because the Exchange does not have options trading rules. In referencing such rules, the Exchange proposes to follow the established and approved rules of NYSE Rule 5.2(j)(6), which also references NYSE Arca Rule 5.3-O.[52]

Proposed Rule 5.2(j)(7) (Trust Certificates)

The Exchange is proposing Rule 5.2(j)(7) to provide rules for the trading pursuant to UTP of trust certificates, so that they may be traded on the Exchange pursuant to UTP. Other

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50 NYSE American Rule 915 is substantially identical to NYSE Arca Rule 5.3-O (NYSE Arca Rule 5.3-O is cross-referenced in NYSE Arca Rule 5.2-E(j)(6), on which NYSE American Rule 5.2E(j)(6) was originally based; see NYSE American ETP Listing Rules Filing, supra note 7), and establishes the criteria for underlying securities of put and call option contracts listed on the exchange.

51 See supra note 43.

52 See NYSE ETP Listing Rules Filing, supra note 8.

than the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 5.2E(j)(7).[53]

Rule 8 – Trading of Certain Exchange Traded Products

The Exchange proposes that the rules set forth in Rule 8 would be based on Sections 1 and 2 of NYSE American Rule 8E, NYSE Rule 8P, and NYSE Arca Rule 8-E. These proposed rules would permit the Exchange to trade pursuant to UTP the following: Currency and Index Warrants, Portfolio Depositary Receipts, Trust Issued Receipts, Commodity-Based Trust Shares, Currency Trust Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, Paired Trust Shares, Trust Units, Managed Fund Shares, and Managed Trust Securities.[54]

The Exchange proposes to designate Rule 8.100(g) as Reserved to maintain the same rule numbers as the NYSE American rules with which it conforms.

The text of proposed Rule 8 is based on Sections 1 and 2 of NYSE American Rule 8E, with only specified non-substantive and technical differences explained below and the General Definitional Term Changes described above. In addition, as described above, proposed Rule 8 would apply only to the trading pursuant to UTP of Exchange Traded Products on the Exchange would not apply to the listing of Exchange Traded Products on the Exchange.

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53 See NYSE American Rule 5.2E(j)(7), which is based on NYSE Arca Rule 5.2-E(j)(7). See also NYSE American ETP Listing Rules Filing, supra note 7 and Securities Exchange Act Release Nos. 59051 (December 4, 2008), 73 FR 75155 (December 10, 2008) (SR-NYSEArca-2008-123) and 58920 (November 7, 2008), 73 FR 68479 (November 18, 2008) (SR-NYSEArca-2008-123).

54 The Exchange is only proposing listing and trading rules necessary to trade ETPs pursuant to UTP. Accordingly, the Exchange, like NYSE American and NYSE LLC, is not proposing a rule comparable to NYSE Arca Rule 8.100-E(g).

Proposed Rules 8.1 – 8.13 – Currency and Index Warrants

The Exchange is proposing Rules 8.1-8.13 to provide rules for the trading pursuant to UTP (including sales-practice rules such as those relating to suitability and supervision of accounts) of currency and index warrants.[55] Proposed Rules 8.1 – 8.13 are based on NYSE American rules 8.1E – 8.13E. The Exchange is proposing the following non-substantive differences between these proposed rules and NYSE American Rules 8.1E-8.13E (Currency and Index Warrants):

Proposed Rule 8.1 (General)

Other than the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 8.1E.

Proposed Rule 8.2 (Definitions)

Other than the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 8.2E.

Proposed Rule 8.3 (Listing of Currency and Index Warrants)

Other than with respect to the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 8.3E.

Proposed Rule 8.4 (Account Approval)

The account approval rules of NYSE American Rule 8.4E reference NYSE American Rule 921[56] in describing the criteria that must be met for opening up a customer account for

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55 NYSE American Rules 8.1E-8.13E, which are based on NYSE Arca Rules 8.1-E – 8.13-E, all pertain to the listing and trading requirements (including sales-practice rules such as those relating to suitability and supervision of accounts) for Currency and Index Warrants. See Section 1 of NYSE American Rule 8E; see also NYSE American ETP Listing Rules Filing, supra note 7 and Securities Exchange Act Release Nos. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR-PCX-00-25) and 59886 (May 7, 2009), 74 FR 22779 (May 14, 2009) (SR-NYSEArca-2009-39).

options trading. Because the Exchange does not plan to trade options at this time and is not proposing to add rules that pertain to the opening of accounts that are approved for options trading, the Exchange proposes to require an ETP Holder to ensure its account is approved for options trading pursuant to NYSE Arca Rule 9.18-E(b).[57]

The Exchange proposes to reference NYSE Arca Rule 9.18-E(b) because the Exchange does not have options trading rules. In referencing such rule, the Exchange proposes to follow the established and approved rules of NYSE Rule 8.4 and NYSE Arca Rule 8.4-E, which also reference NYSE Arca Rule 9.18-E(b).[58]

Proposed Rule 8.5 (Suitability)

The account suitability rules of NYSE American Rule 8.5E reference NYSE American Rule 923[59] in describing rules that apply to recommendations made in stock index, currency index and currency warrants. Because the Exchange does not plan to trade options at this time and is not proposing to add rules that pertain to account suitability for options trading described in NYSE American Rule 923, the Exchange proposes to cross-reference NYSE Arca Rule 9.18-

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56 NYSE American Rule 921 is substantially similar to NYSE Arca Rule 9.18-E(b) (NYSE Arca Rule 9.18-E(b) is cross-referenced in NYSE Arca Rule 8.4-E, on which NYSE American Rule 8.4E was originally based; see NYSE American ETP Listing Rules Filing, supra note 7), and establishes criteria that must be met to open up a customer account for options trading.

57 See supra note 43.

58 See NYSE ETP Listing Rules Filing, supra note 8.

59 Rule 923 is substantially similar to NYSE Arca Rule 9.18-E(c) (NYSE Arca Rule 9.18-E(c) is cross-referenced in NYSE Arca Rule 8.5-E, on which NYSE American Rule 8.5E was originally based; see NYSE American ETP Listing Rules Filing, supra note 7), and establishes suitability rules that pertain to recommendations in stock index, currency index and currency warrants.

E(c) in proposed Rule 8.5. The Exchange would apply the criteria set forth in NYSE Arca Rule 9.18-E(c) in determining account suitability.[60]

The Exchange proposes to reference NYSE Arca Rule 9.18-E(c) because the Exchange does not have options trading rules. In referencing such rule, the Exchange proposes to follow the established and approved rules of NYSE Rule 8.5 and NYSE Arca Rule 8.5-E, which also reference NYSE Arca Rule 9.18-E(c).[61]

Proposed Rule 8.6 (Discretionary Accounts)

The rules of NYSE American Rule 8.6E state that NYSE American Rule 408-Equities[62] will not apply to customer accounts insofar as they may relate to discretion to trade in stock index, currency index and currency warrants, and that NYSE American Rule 924[63] will apply to such discretionary accounts instead. Because the Exchange does not plan to trade options at this time and is not proposing a rule specific to the Exchange's discretionary accounts for equity trading as described in NYSE American Rule 408-Equitites, nor a rule that pertains to exercising discretion for options trading described in NYSE American Rule 924, the Exchange proposes to cross-reference to NYSE Arca Rule 9.18-E(e) in proposed Rule 8.6. The Exchange would apply

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60 See supra note 42 [sic].

61 See NYSE ETP Listing Rules Filing, supra note 8.

62 NYSE American Rule 408-Equities is substantially similar to NYSE Arca Rule 9.6-E(a) (NYSE Arca Rule 9.6-E(a) is cross-referenced in NYSE Arca Rule 8.6-E, on which NYSE American Rule 8.6E was originally based; see NYSE American ETP Listing Rules Filing, supra note 7), and pertains to the rules of the exchange with regard to discretionary power in customer accounts for equity trading.

63 NYSE American Rule 924 is substantially similar to NYSE Arca Rule 9.18-E(e) (NYSE Arca Rule 9.18-E(e) is cross-referenced in NYSE Arca Rule 8.6-E, on which NYSE American Rule 8.6E was originally based; see NYSE American ETP Listing Rules Filing, supra note 7), and establishes rules pertaining to discretion as to customer accounts for options trading.

the criteria set forth in this rule in determining whether an ETP Holder appropriately exercised discretion.[64]

The Exchange proposes to reference NYSE Arca Rule 9.18-E(e) because the Exchange does not have options trading rules. In referencing such rule, the Exchange proposes to follow the established and approved rules of NYSE Rule 8.6 and NYSE Arca Rule 8.6-E, which also reference NYSE Arca Rule 9.18-E(e).[65]

Proposed Rule 8.7 (Supervision of Accounts)

The account supervision rules of NYSE American Rule 8.7E reference NYSE American Rule 922[66] in describing rules that apply to the supervision of customer accounts in which transactions in stock index, currency index or currency warrants are effected. Because the Exchange does not plan to trade options at this time and is not proposing to add rules that pertain to the supervision of customer accounts for options trading described in NYSE American Rule 922, the Exchange proposes to cross-reference to NYSE Arca Rule 9.18-E(d) in proposed Rule 8.7. The Exchange would apply the criteria set forth in NYSE Arca Rule 9.18-E(d)in supervising such accounts.[67]

The Exchange proposes to reference NYSE Arca Rule 9.18-E(d) because the Exchange does not have options trading rules. In referencing such rule, the Exchange proposes to follow

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64 See supra note 43.

65 See NYSE ETP Listing Rules Filing, supra note 8.

66 NYSE American Rule 922 is substantially similar to NYSE Arca Rule 9.18-E(d) (NYSE Arca Rule 9.18-E(d) is cross-referenced in NYSE Arca Rule 8.7-E, on which NYSE American Rule 8.7E was originally based; see NYSE American ETP Listing Rules Filing, supra note 7), and establishes account supervision rules that apply to the supervision of customer accounts in which transactions in stock index, currency index and currency warrants are effected.

67 See supra note 43.

the established and approved rules of NYSE Rule 8.7 and NYSE Arca Rule 8.7-E, which also reference NYSE Arca Rule 9.18-E(d).[68]

Proposed Rule 8.8 (Customer Complaints)

The customer complaint rules of NYSE American Rule 8.8E reference NYSE American Rule 932[69] in describing rules that apply to customer complaints received regarding stock index, currency index or currency warrants. Because the Exchange does not plan to trade options at this time and is not proposing to add rules for doing a public business in options as described in NYSE American Rule 932, the Exchange proposes to cross-reference to NYSE Arca Rule 9.18-E(l) in proposed Rule 8.8. The Exchange would apply the criteria set forth in NYSE Arca Rule 9.18-E(l) to customer complaints.[70]

The Exchange proposes to reference NYSE Arca Rule 9.18-E(l) because the Exchange does not have options trading rules. In referencing such rule, the Exchange proposes to follow the established and approved rules of NYSE Rule 8.8 and NYSE Arca Rule 8.8-E, which also reference NYSE Arca Rule 9.18-E(l).[71]

Proposed Rule 8.9 (Prior Approval of Certain Communications to Customers)

The rules pertaining to communications to customers regarding stock index, currency index and currency warrants described in NYSE American 8.9E reference NYSE American Rule

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68 See NYSE ETP Listing Rules Filing, supra note 8.

69 NYSE American Rule 932 is substantially similar to NYSE Arca Rule 9.18-E(l) (NYSE Arca Rule 9.18-E(l) is cross-referenced in NYSE Arca Rule 8.8-E, on which NYSE American Rule 8.8E was originally based; see NYSE American ETP Listing Rules Filing, supra note 7), and establishes rules that apply to customer complaints received regarding stock index, currency index or currency warrants.

70 See supra note 43.

71 See NYSE ETP Listing Rules Filing, supra note 8.

991.[72] Because the Exchange does not plan to trade options at this time and is not proposing to add rules for advertisements, market letters and sales literature relating to options as described in NYSE American Rule 991, the Exchange proposes to cross-reference to the Commentaries to NYSE Arca Rule 9.28-E in proposed Rule 8.9. The Exchange would apply the criteria set forth in the Commentaries to NYSE Arca Rule 9.28-E to prior approvals of such communications to customers.[73]

The Exchange proposes to reference to the Commentaries to NYSE Arca Rule 9.28-E because the Exchange does not have options trading rules. In referencing such rules, the Exchange proposes to follow the established and approved rules of NYSE Rule 8.9 and NYSE Arca Rule 8.9-E, which also reference Commentaries to NYSE Arca Rule 9.28-E.[74]

Proposed Rule 8.10 (Position Limits)

Other than the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 8.10E.

Proposed Rule 8.11 (Exercise Limits)

Other than the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 8.11E.

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72 NYSE American Rule 991 is substantially similar to NYSE Arca Rule 9.28-E (NYSE Arca Rule 9.28-E is cross-referenced in NYSE Arca Rule 8.9-E, on which NYSE American Rule 8.9E was originally based; see NYSE American ETP Listing Rules Filing, supra note 7), and establishes rules regarding advertisements, sales literature and educational material issued to any customer or member of the public pertaining to stock index, currency index or currency warrants.

73 See supra note 43.

74 See NYSE ETP Listing Rules Filing, supra note 8.

Proposed Rule 8.12 (Trading Halts or Suspensions)

Other than the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 8.12E.

Proposed Rule 8.13 (Reporting of Warrant Positions)

Other than the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 8.13E.

Proposed Rules 8.100 – 8.700

The Exchange is proposing:

- Rule 8.100 to provide rules for the trading pursuant to UTP of portfolio depositary receipts. Other than the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 8.100E.[75]
- Rule 8.200 to provide rules for the trading pursuant to UTP of trust issued receipts. Other than the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 8.200E.[76]

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75 See NYSE American Rule 8.100E, which is based on NYSE Arca Rule 8.100-E. See also NYSE American ETP Listing Rules Filing, supra note 7 and Securities Exchange Act Release Nos. 39461 (December 17, 1997), 62 FR 67674 (December 29, 1997) (SR-PCX-97-35); 39188 (October 2, 1997), 62 FR 53373 (October 14, 1997) (SR-PCX-97-35); and 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR-PCX-2001-14).

76 See NYSE American Rule 8.200E, which is based on NYSE Arca Rule 8.200-E. See also NYSE American ETP Listing Rules Filing, supra note 7 and Securities Exchange Act Release Nos. 58162 (July 15, 2008), 73 FR 42391 (July 21, 2008) (SR-NYSEArca-2008-73) and 44182 (April 16, 2001), 66 FR 21798 (April 16, 2001) (SR-PCX-2001-01).

- Rule 8.201 to provide rules for the trading pursuant to UTP of commodity-based trust shares. Other than the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 8.201E.[77]
- Rule 8.202 to provide rules for the trading pursuant to UTP of currency trust shares. Other than the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 8.202E.[78]
- Rule 8.203 to provide rules for the trading pursuant to UTP of commodity index trust shares. Other than the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 8.203E.[79]
- Rule 8.204 to provide rules for the trading pursuant to UTP of commodity futures trust shares, so that they may be traded on the Exchange pursuant to UTP. Other

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77 See NYSE American Rule 8.201E, which is based on NYSE Arca Rule 8.201-E. See also NYSE American ETP Listing Rules Filing, supra note 7 and Securities Exchange Act Release No. 51067 (January 21, 2005), 70 FR 3952 (January 27, 2005) (SR-PCX-2004-132).

78 See NYSE American Rule 8.202E, which is based on NYSE Arca Rule 8.202-E. See also NYSE American ETP Listing Rules Filing, supra note 7 and Securities Exchange Act Release Nos. 60065 (June 8, 2009), 74 FR 28310 (June 15, 2009) (SR-NYSEArca-2009-47) and 53253 (February 8, 2006), 71 FR 8029 (February 15, 2006) (SR-PCX-2005-123).

79 See NYSE American Rule 8.203E, which is based on NYSE Arca Rule 8.203-E. See also NYSE American ETP Listing Rules Filing, supra note 7 and Securities Exchange Act Release No. 54025 (June 21, 2006), 71 FR 36856 (June 28, 2006) (SR-NYSEArca-2006-12).

than the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 8.204E.[80]

- Rule 8.300 to provide rules for the trading pursuant to UTP of partnership units. Other than the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 8.300E-Equities.[81]
- Rule 8.400 to provide rules for the trading pursuant to UTP of paired trust shares. Other than the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 8.400E.[82]
- Rule 8.500 to provide rules for the trading pursuant to UTP of trust units. Other than the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 8.500E.[83]

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80 See NYSE American Rule 8.204E, which is based on NYSE Arca Rule 8.204-E. See also NYSE American ETP Listing Rules Filing, supra note 7 and Securities Exchange Act Release Nos. 57838 (May 20, 2008), 73 FR 30649 (May 28, 2008) (SR-NYSEArca-2008-09) and 57636 (April 8, 2008), 73 FR 20344 (April 15, 2008) (SR-NYSEArca-2008-09).

81 See NYSE American Rule 8.300E, which is based on NYSE Arca Rule 8.300-E. See also NYSE American ETP Listing Rules Filing, supra note 7 and Securities Exchange Act Release No. 53875 (May 25, 2006), 71 FR 32164 (January 2, 2006) (SR-NYSEArca-2006-11).

82 See NYSE American Rule 8.400E, which is based on NYSE Arca Rule 8.400-E. See also NYSE American ETP Listing Rules Filing, supra note 7 and Securities Exchange Act Release Nos. 55033 (December 29, 2006), 72 FR 1253 (January 10, 2007) (SR-NYSEArca-2006-75) and 58312 (August 5, 2008), 73 FR 46689 (August 11, 2008) (SR-NYSEArca-2008-63).

83 See NYSE American Rule 8.500E, which is based on NYSE Arca Rule 8.500-E. See also NYSE American ETP Listing Rules Filing, supra note 7 and Securities Exchange Act Release Nos. 57059 (December 28, 2007), 73 FR 909 (January 4, 2008) (SR-NYSEArca-2006-76) and 63129 (October 19, 2010), 75 FR 65539 (October 25, 2010) (SR-NYSEArca-2010-91).

- Rule 8.600 to provide rules for the trading pursuant to UTP of managed fund shares. Other than the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 8.600E.[84]
- Rule 8.700 to provide rules for the trading pursuant to UTP of managed trust securities. Other than the General Definitional Term Changes described above, there are no differences between this proposed rule and NYSE American Rule 8.700E.[85]

Rule 6 – Consolidated Audit Trail and Order Audit Trail System

Proposed Rule 6.6800 Series (Compliance Rules)

As noted above, the Exchange proposes to renumber its existing Compliance Rules relating to the CAT NMS Plan under Rule 6 without any substantive changes. The Compliance Rules require Industry Members to comply with the provisions of the CAT NMS Plan.[86] The Compliance Rule includes twelve rules covering the following areas: (1) Definitions; (2) clock synchronization; (3) Industry Member Data reporting; (4) Customer information reporting; (5) Industry Member information reporting; (6) time stamps; (7) clock synchronization rule

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84 See, NYSE American Rule 8.600E, which is based on NYSE Arca Rule 8.600-E. See also NYSE American ETP Listing Rules Filing, supra note 7 and Securities Exchange Act Release Nos. 57395 (February 28, 2008), 73 FR 11974 (March 5, 2008) (SR-NYSEArca-2008-25) and 57619 (April 4, 2008), 73 FR 19544 (April 10, 2008) (SR-NYSEArca-2008-25).

85 See, NYSE American Rule 8.700E, which is based on NYSE Arca Rule 8.700-E. See also NYSE American ETP Listing Rules Filing, supra note 7 and Securities Exchange Act Release Nos. 60064 (June 8, 2009), 74 FR 28315 (June 15, 2009) (SR-NYSEArca-2009-30) and 59835 (April 28, 2009), 74 FR 21041 (May 6, 2009) (SR-NYSEArca-2009-30).

86 Unless otherwise specified, capitalized terms used are defined as set forth herein, the CAT Compliance Rule Series or in the CAT NMS Plan.

violations; (8) connectivity and data transmission; (9) development and testing; (10) recordkeeping; (11) timely, accurate and complete data; and (12) compliance dates.

In moving the Compliance Rules to Rule 6, the Exchange proposes to renumber Rules 14.1 through 14.12 as proposed Rules 6.6800 through 6.6895, which is based in part on the NYSE Arca rule numbering for its Compliance Rules, but not make any substantive changes to those rules. The Exchange proposes non-substantive differences to the Compliance Rules to use a different sub-paragraph numbering format.[87] The proposed sub-numbering for the Compliance Rules (i.e., 6800-6895) mirrors the rule-numbering framework for the CAT NMS Plan Compliance Rules on FINRA, NYSE, and NYSE American and includes a sub-section rule heading of "Rule 6.6800 Consolidated Audit Trail Compliance Rule."

Proposed Rule 6.6900 (Consolidated Audit Trail – Fee Dispute Resolution)

The Exchange proposes Rule 6.6900 to establish the procedures for resolving potential disputes related to CAT Fees charged to Industry Members. Section 11.5 of the CAT NMS Plan requires participants to that plan to adopt rules requiring that disputes with respect to fees charged to Industry Members pursuant to the CAT NMS Plan be determined by the Operating Committee or Subcommittee. Section 11.5 of the CAT NMS Plan also states that decisions by the Operating Committee or Subcommittee on such matters will be binding on Industry Members, without prejudice to the right of any Industry Member to seek redress from the SEC pursuant to SEC Rule 608 or in any other appropriate forum. The Commission has approved industry-wide rules that set forth such fee dispute procedures.[88] At the time when CAT NMS

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87 Current Exchange rules use an "(a)(i)(A)(1)" sub-paragraph numbering convention and the Exchange proposes to use an "(a)(1)(A)(i)" sub-paragraph numbering convention.

88 See Securities Exchange Act Release No. 81500 (August 30, 2017), 82 FR 42143 (September 6, 2017) (SR-BatsBYX-2017-13; SR-BatsBZX-2017-39; SR-BatsEDGA-

Plan Participants adopted the Fee Dispute Rule, the Exchange had ceased operations and therefore did not adopt the rule.

Proposed Rule 6.6900 would set forth the Exchange's proposed procedures to resolve disputes initiated by an Industry Member with respect to CAT fees and is based on NYSE Arca Rule 11.6900 specifically, and the rules of other exchanges generally, without any substantive differences.[89] Proposed Rule 6.6900(a) would set forth definitions used for purposes of the rule and proposed Rule 6.6900(b) would set forth the "Fee Dispute Resolution Procedures under the CAT NMS Plan." The proposed sub-numbering for the CAT NMS Plan Fee Dispute Rule (i.e., 6900) mirrors the rule-numbering framework for the CAT NMS Plan Fee Dispute Rule on FINRA, NYSE, and NYSE American.

Proposed Rule 6.7400 (Order Audit Trail System)

The Exchange proposes OATS rules based on NYSE Arca Rules 6.7400-E Series, which in turn are based on the FINRA Rules 7400 Series. The proposed NYSE National Rule 6.7400 Series would consist of proposed Rules 6.7410 through 6.7470, which are based on NYSE Arca Rules 6.7410-E through 6.7470-E without any substantive differences. The Exchange proposes non-substantive differences throughout the Rule 6.7400 Series to refer to the Exchange instead of NYSE Arca and to use the defined term "Associated Person."

2017-14; SR-BatsEDGX-2017-24; SR-BOX-2017-19; SR-CBOE-2017-043; SR-IEX-2017-21; SR-ISE-2017-52; SR-MRX-2017-08; SR-MIAX-2017-24; SR-NASDAQ-2017-059; SR-BX-2017-029; SR-GEMX-2017-059; SR-PHLX-2017-47; SR-NYSE-2017-24; SR-NYSEArca-2017-60; SR-NYSEMKT-2017-31) (Order Approving Proposed Rule Changes to Adopt a CAT Fee Dispute Resolution Process) ("Fee Dispute Approval Order").

89 The Exchange will file a separate proposed rule change for Consolidated Audit Trail Funding Fees on the Exchange's Fee Schedule.

- Proposed Rule 6.7140 (Definitions) would set forth definitions used for purposes of the Rule 6.7400 Series and is based on NYSE Arca Rule 6.7410-E without any substantive differences.
- Proposed Rule 6.7420 (Applicability) would specify that the requirements of the Rule 6.7400 Series are applicable to all ETP Holders and their associated persons and to all NMS Stocks that trade on the Exchange, and is based on NYSE Arca Rule 6.720-E without any differences.
- Proposed Rule 6.7430 (Synchronization of ETP Holder Business Clocks) would require ETP Holders to synchronize business clocks used for purposes of recording the date and time of specified events, and is based on NYSE Arca Rule 6.7430 without any differences.
- Proposed Rule 6.7440 (Recording of Order Information) would require ETP Holders to comply with FINRA Rule 7440 as if such rule were part of the Exchange's rules and is based on NYSE Arca Rule 6.7440-E without any substantive differences.
- Proposed Rule 6.7450 (Order Data Transmission Requirements) would require ETP Holders to comply with FINRA Rule 7450 as if such rule were part of the Exchange's rules and is based on NYSE Arca Rule 6.7450-E without any substantive differences.
- Proposed Rule 6.7460 (Violation of Order Audit Trail System Rules) would provide that failure of an ETP Holder or associated person to comply with the requirements of proposed Rules 6.7410 through 6.7460 may be considered conduct that is inconsistent with high standards of commercial honor and just and

equitable principles of trade. This proposed rule is based on NYSE Arca Rule 6.7460-E with a non-substantive difference to cross reference proposed Rule 11.3.1 instead of NYSE Arca Rule 9.2010.

- Proposed Rule 6.7470 (Exemption to the Order Recording and Data Transmission Requirements) would provide for how an ETP Holder may apply for an exemption from the Rule 6.7400 Series and is based on NYSE Arca Rule 6.7470-E without any differences.

At the time the Exchange ceased operations, it did not require its ETP Holders to maintain order information pursuant to an order tracking system and therefore, did not have the OATS rules or similar rules in its rulebook. The Exchange does not believe that requiring Exchange ETP Holders to comply with the OATS requirements in connection with the re-launch of trading will impose an undue burden on such ETP Holders or its associated persons. Once the Exchange restarts operation, ETP Holders that are also FINRA members ("Dual Members") would already be subject to FINRA's OATS requirements. Similarly, because NYSE Arca, NYSE, and NYSE American each also have rules based on the FINRA OATS requirements, Exchange ETP Holders that are not members of FINRA, but are members of NYSE Arca, NYSE, or NYSE American, will already be subject to such OATS requirements.[90] To the extent an Exchange ETP Holder is not also a member of FINRA, one of the Exchange's affiliated exchanges, or Nasdaq (which also requires compliance with FINRA OATS requirements), the

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90 The Exchange's affiliates, NYSE, NYSE Arca, and NYSE American, all have substantially similar requirements and the proposed rules are similar to the rules adopted by the Exchange's affiliates. See NYSE Rules 7410 through 7470; NYSE Arca Rule 6.7410-E through 6.7470-E.; and NYSE American Rule 7410 - Equities through 7470 - Equities. See also Nasdaq Rule 7400A Series.

Exchange believes that the OATS requirements for non-FINRA members are not onerous, as order information pursuant to those rules need only be submitted upon request.[91]

The Exchange believes that requiring its members to comply with the OATS rules will further promote cross-market surveillance and enhance FINRA's ability to conduct surveillance and investigations for the Exchange under a Regulatory Services Agreement. The proposed sub-numbering of the OATS Rules (i.e., 7410-7470) mirrors the rule numbers for the OATS rules on FINRA, NYSE, and NYSE American.

Because Rule 6 would include the Compliance Rules, the Fee Dispute Rule, and the OATS rules, the Exchange proposes to delete the word "System" from the title of Rule 6. The Exchange further proposes to delete the rules in Chapter XIV in their entirety.

Rule 7 – Equities Trading

As noted above, the Exchange proposes trading rules based on the cash equities rules of NYSE Arca and, in some cases specified below, NYSE American. Accordingly, Proposed Rule 7 would include rules based on NYSE Arca Rule 7-E or NYSE American 7E, or both, including general provisions relating to trading, market makers, trading on the Exchange, operation of the routing broker, and the Plan to Implement a Tick Size Pilot Program. Proposed Rule 7 would therefore specify all aspects of trading on the Exchange, including the orders and modifiers that would be available and how orders would be ranked, displayed, and executed. Similar to NYSE American, the Exchange proposes the following non-substantive differences throughout Rule 7:

- to use the term "Exchange" instead of "NYSE Arca Marketplace;"
- to use the term "Exchange Act," which is a proposed defined term;

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91 See proposed Rule 6.7450-E(b). The Exchange is aware of only one former Exchange ETP Holder that is not also a member of FINRA, NYSE Arca, NYSE American, NYSE, or Nasdaq.

- to use the term "Exchange Book" instead of "NYSE Arca Book;"
- to use the term "will" instead of "shall;"
- to use the term "ETP Holders" instead of "Users;" and
- to use the capitalized term "Associated Person."

In addition, because the Exchange will be using Pillar phase II protocols, the Exchange will not include rule text based on NYSE Arca's order behavior using Pillar phase I protocols, as described in NYSE Arca Rules 7.11-E, 7.31-E, and 7.34-E.

Section 1 of Rule 7 would specify the General Provisions relating to trading on the Pillar trading platform. The Exchange proposes the following rules:

- Proposed Rule 7.1 (Hours of Business) would specify that the Exchange would be open for the transaction of business on every business day. The proposed rule also sets forth when the President may take specified actions, such as halting or suspending trading in some or all securities on the Exchange. The proposed rule is based on NYSE Arca Rule 7.1-E and NYSE American Rule 7.1E without any differences.
- Proposed Rule 7.2 (Holidays) would establish the holidays when the Exchange would not be open for business. The proposed rule is based on NYSE American Rule 7.2E (which has updated rule text as compared to NYSE Arca Rule 7.2-E regarding when that exchange would be open for business if a holiday falls on a Sunday) without any differences.
- Proposed Rule 7.3 (Commissions) would establish that ETP Holders may not charge fixed commissions and must indicate whether acting as a broker or as principal. The proposed rule is based on NYSE Arca Rule 7.3-E and NYSE

American Rule 7.3E with a non-substantive difference to reference "Associated Persons," which is a defined term on the Exchange, instead of the phrase "Allied Persons, partners, approved persons or stockholder associates" in paragraph (c) of proposed Rule 7.3.

- Proposed Rule 7.4 (Ex-Dividend or Ex-Right Dates) would establish the ex-dividend and ex-rights dates for stocks traded regular way. The proposed rule is based on NYSE Arca Rule 7.4-E and NYSE American Rule 7.4E without any differences.
- Proposed Rule 7.5 (Trading Units) would establish the unit of trading in stocks, including "round lot," "odd lot," and "mixed lot." The proposed rule is based on NYSE Arca Rule 7.5-E and NYSE American Rule 7.5E without any differences.
- Proposed Rule 7.6 (Trading Differentials) would establish the minimum price variation for quoting and entry of orders for securities priced at $1.00 or more and for securities priced at less than $1.00. The proposed rule is based on NYSE Arca Rule 7.6-E and NYSE American Rule 7.6E without any substantive differences.
- Proposed Rule 7.7 (Transmission of Bids or Offers) would establish that all bids and offers on the Exchange would be anonymous unless otherwise specified by the ETP Holder. The proposed rule is based on NYSE Arca Rule 7.7-E and NYSE American Rule 7.7E without any differences.
- Proposed Rule 7.8 (Bid or Offer Deemed Regular Way) would establish that all bids and offers would be considered to be "regular way." This proposed rule text is based on NYSE Arca Rule 7.8-E and NYSE American Rule 7.8E.

- Proposed Rule 7.9 (Execution Price Binding) would establish that, notwithstanding Exchange rules on clearly erroneous executions, the price at which an order is executed is binding notwithstanding that an erroneous report is rendered. This proposed rule text is based on NYSE Arca Rule 7.9-E and NYSE American Rule 7.9E without any differences.
- Proposed Rule 7.10 (Clearly Erroneous Executions) would set forth the Exchange's rules on clearly erroneous executions. The proposed rule is based on NYSE Arca Rule 7.10-E and NYSE American Rule 7.10E with one substantive difference: because the Exchange would not be conducting any auctions, the Exchange does not propose text based on NYSE Arca Rule 7.10-E(a) and NYSE American Rule 7.10E(a) that provides that executions as a result of a Trading Halt Auction are not eligible for a request to review as clearly erroneous under paragraph (b) of such rule.
- Proposed Rule 7.11 (Limit Up – Limit Down Plan and Trading Pauses in Individual Securities Due to Extraordinary Market Volatility) would specify how the Exchange would comply with the Regulation NMS Plan to Address Extraordinary Market Volatility ("LULD Plan").[92] The proposed rule is based on NYSE Arca Rule 7.11-E and NYSE American Rule 7.11E with the following substantive differences. First, proposed Rule 7.11(a)(6) is based on NYSE

92 See Securities Exchange Act Release No. 80455 (April 13, 2017), 82 FR 18519 (April 19, 2017) (Order approving thirteenth amendment to the LULD Plan).

American Rule 7.11E(a)(6) and NYSE Arca Rule 7.11-E(a)(7).[93] Next, because the Exchange will not be a listing exchange, the Exchange will not include rule text based on NYSE Arca Rule 7.11-E(a)(8) (relating to triggering a Straddle State under the LULD Plan), (a)(9) (relating to calculating Price Bands after NYSE Arca opens or re-opens an Exchange-listed security), or (b)(1) (relating to notifying the single plan processor if NYSE Arca is not able to reopen trading at the end of a Trading Pause due to a systems or technology issue). Finally, the Exchange proposes that Rule 7.11(b) would provide that if a primary listing market issues a Trading Pause, the Exchange would resume trading as provided for in proposed Rule 7.18, which is based on NYSE Arca Rule 7.11-E(b)(2).

- Proposed Rule 7.12 (Trading Halts Due to Extraordinary Market Volatility) would establish rules on halts in trading due to extraordinary market volatility and related reopening of trading. The proposed rule is based on NYSE Arca Rule 7.12-E and NYSE American Rule 7.12E without any substantive differences.
- Proposed Rule 7.13 (Trading Suspensions) would establish authority for the Chair or the President of the Exchange to suspend trading in any and all securities that trade on the Exchange if such suspension would be in the public interest. This proposed rule is based on NYSE Arca Rule 7.13-E and NYSE American Rule 7.13E without any substantive differences. Because this proposed rule covers the same subject matter as current Rule 12.11, as discussed below, the Exchange does not propose to move Rule 12.11 to Rule 11 and would delete Rule 12.11.

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93 As noted above, the Exchange will be on Pillar phase II protocols and therefore will not include rule text from NYSE Arca regarding functionality based on Pillar phase I protocols.

- Proposed Rule 7.14 (Clearance and Settlement) would establish the requirements regarding an ETP Holder's arrangements for clearing. Because all post-trade functions on the Exchange's Pillar trading platform would follow the NYSE Arca procedures for post-trade processing, the Exchange proposes rules that are based on NYSE Arca rules [sic] clearing rules. Accordingly, the proposed rule is based on NYSE Arca Rule 7.14-E and NYSE American Rule 7.14E without any substantive differences.
- Proposed Rule 7.15 (Stock Option Transactions) would establish requirements for Market Makers relating to pool dealing and having an interest in an option that is not issued by the Options Clearing Corporation. The proposed rule is based on NYSE Arca Rule 7.15-E and NYSE American Rule 7.15E without any substantive differences.
- Proposed Rule 7.16 (Short Sales) would establish requirements relating to short sales. The proposed rule is based on NYSE Arca Rule 7.16-E with the following substantive differences. Because the Exchange would not be a listing venue, the Exchange would not be evaluating whether the short sale price test restrictions of Rule 201 of Regulation SHO have been triggered. Accordingly, the Exchange does not propose rule text based on NYSE Arca Rule 7.16-E(f)(3) or NYSE American Rule 7.16E(f)(3) and would designate that sub-paragraph as "Reserved." For similar reasons, the Exchange proposes not to include rule text based on NYSE Arca Rule 7.16-E(f)(4)(A) and (B) or NYSE American Rule 7.16E(f)(4)(A) and (B).

- Proposed Rule 7.17 (Firm Orders and Quotes) would establish requirements that all orders and quotes must be firm. This proposed rule is based on NYSE Arca Rule 7.17-E without any differences.
- Proposed Rule 7.18 (Halts) would establish rules relating to trading halts of securities traded pursuant to UTP on the Exchange's Pillar platform. This proposed rule is based on NYSE Arca Rule 7.18-E(a), (b), and (d) and NYSE American Rule 7.18E(a), (b), and (d). Proposed Rule 7.18(c) would be based on NYSE American Rule 7.18E(d) and would use the Exchange-defined terms of "Exchange Traded Product" and "UTP Exchange Traded Product." Because the Exchange will not be a listing venue, the Exchange does not proposed rule text based on NYSE Arca Rule 7.18-E(c) or NYSE American Rule 7.18E(c). In addition, the Exchange proposes to use the term "reopening auction" instead of "Trading Halt Auction" in proposed Rule 7.18(b).

Section 2 of proposed Rule 7 proposes rules for market makers on the Exchange. Specifically, for all securities that would trade on the Exchange, an ETP Holder could register as a Market Maker and be subject to obligations similar to the obligations of a Market Maker on NYSE Arca. The Exchange proposes the following rules, based on cash equities NYSE Arca and NYSE American rules of the same number with non-substantive differences:

- Proposed Rule 7.20 (Registration of Market Makers) would establish the registration requirements for market makers on the Exchange. This proposed rule is based on NYSE American Rule 7.20E without any substantive differences. The Exchange proposes non-substantive differences to cross reference the Rule 10.9500 and 10.9200 Series in proposed Rule 7.20(c) and (e), respectively.

- Proposed Rule 7.21 (Obligations of Market Maker Authorized Traders) would set forth the requirements that MMATs are permitted to enter orders only for the account of the Market Maker for which they are registered. The proposed rule would also specify the registration requirements for MMAT and the procedures for suspension and withdrawal of registration. This proposed rule is based on NYSE Arca Rule 7.21-E and NYSE American Rule 7.21E without any substantive differences.
- Proposed Rule 7.22 (Registration of Market Makers in a Security) would set forth the process for Market Makers to become registered in a security and the factors the Exchange may consider in approving the registration of a Market Maker in a security. The proposed rule would also describe both the termination of a Market Maker's registration in a security by the Exchange and voluntary termination by a Market Maker. This proposed rule is based on NYSE Arca Rule 7.22-E and NYSE American Rule 7.22E without any substantive differences. The Exchange proposes non-substantive differences to cross reference proposed Rule 10.9200 and 10.9500 Series in proposed Rule 7.22(e) and (g), respectively.
- Proposed Rule 7.23 (Obligations of Market Makers) would set forth the obligation of all Market Makers to engage in a course of dealings for their own account to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets on the Exchange and would delineate the specific responsibilities and duties of Market Makers, including the obligation to maintain continuous, two-sided trading in registered securities and certain pricing obligations Market Makers are required to adhere to. This proposed rule is based on NYSE Arca

Rule 7.23-E and NYSE American Rule 7.23E without any substantive differences. The Exchange proposes a non-substantive difference to cross reference proposed Rule 10.9200 Series in proposed Rule 7.23(c).

- Proposed Rule 7.28 (NMS Market Access) would implement the Exchange's obligations under Rule 610 of Regulation NMS and is based on NYSE Arca Rule 7.28-E without any differences.[94]

Section 3 of proposed Rule 7 would establish the Exchange's trading rules. Among other things, these rules would establish the orders and modifiers that would be available on the Exchange (proposed Rule 7.31), would describe order display and ranking (proposed Rule 7.36), and would describe how the Exchange would ensure that orders would not trade through either the PBBO (for Limit Orders) or NBBO (for Market Orders and Inside Limit Orders) and when orders would route (proposed Rules 7.37 and 7.34).

As noted above, the Exchange will not conduct any auctions, and therefore does not propose a rule based on NYSE Arca Rule 7.35-E or NYSE American Rule 7.35E. In addition, because the Exchange would not offer a retail liquidity program, the Exchange does not propose a rule based on NYSE Arca Rule 7.44-E and proposed Rules 7.36, 7.37, and 7.38 would not include cross references to Rule 7.44.

- Proposed Rule 7.29 (Access) would provide that the Exchange would be available for entry and cancellation of orders by ETP Holders with authorized access. To obtain authorized access to the Exchange, each ETP Holder would be required to enter into a User Agreement. Proposed Rule 7.29 is based on NYSE Arca Rule 7.29-E(a) and NYSE American Rule 7.29E, without any substantive differences.

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94 Rules 7.24, 7.25, 7.26, and 7.27 would be designated as "Reserved."

The Exchange does not propose to include rule text based on NYSE Arca Rule 7.29-E(b) because the Exchange would not offer sponsored access.

- Proposed Rule 7.30 (Authorized Traders) would provide for requirements relating to Authorized Traders and is based on NYSE Arca Rule 7.30-E and NYSE American Rule 7.30E without any differences.
- Proposed Rule 7.31 (Orders and Modifiers) would specify the orders and modifiers that would be available on the Exchange. The Exchange proposes to offer the same types of orders and modifiers that are available on NYSE Arca, with specified substantive differences. Accordingly, proposed Rule 7.31 is based on NYSE Arca Rule 7.31-E with the following substantive differences.

  First, in proposed Rule 7.31(a)(2)(B), in describing the Limit Order Price Protection, the Exchange proposes to provide that a Limit Order entered before the Core Trading Session that is designated for the Core Trading Session only will become subject to Limit Order Price Protection once it becomes eligible to trade. The Exchange proposes this difference because the Exchange would not be conducting any auctions on the Exchange.

  Second, the Exchange proposes that, similar to NYSE Arca, it would accept Auction-Only Orders (e.g., Limit-on-Open Order ("LOO Order"), Market-on-Open Order ("MOO Order"), Limit-on-Close Order ("LOC Order"), and Market-on-Close Order ("MOC Order"). However, because the Exchange would not be conducting auctions, it proposes to define an Auction-Only Order as a Limit or Market Order that is only to be routed pursuant to proposed Rule 7.34. Accordingly, on arrival, such orders would be routed to the primary listing market

and would not be entered on the Exchange Book. The Exchange proposes to accept four types of Auction-Only Orders that would be routed to the primary listing market: MOO, LOO, MOC, and LOC Orders. As described in proposed Rules 7.31(f) and 7.34, such orders would be subject to the rule requirements of the respective primary listing exchange to which they are routed. In addition, because the Exchange would only accept and route Auction-Only Orders, it would not include rule text based on the second sentences of NYSE Arca Rules 7.31(c)(1) and (2) and would refer to such orders being traded in "an opening or re-opening auction" or "a closing auction," rather than state that such orders would be traded during "the Core Open Auction or a Trading Halt Auction" or "the Closing Auction," which are defined terms in the NYSE Arca rules.

Third, because the Exchange would not be a listing venue, the Exchange does not propose to include rule text that provides that "[a] Primary Only Order instruction on a security listed on the Exchange will be ignored" in proposed Rule 7.31(f)(1).

Fourth, at this time, the Exchange is not proposing to offer a Discretionary Pegged Order and, therefore, proposes to designate Rule 7.31(h)(3) as "Reserved" and will not include a reference to Discretionary Pegged Orders in proposed Rule 7.34.

Finally, similar to NYSE American Rule 7.31E(e)(1), the Exchange proposes to refer to the order described in this rule text as a "Limit Non-Routable Order."

- Proposed Rule 7.32 (Order Entry) would establish requirements for order entry size. The proposed rule is based on NYSE Arca Rule 7.32-E and NYSE American Rule 7.32E without any substantive differences.

- Proposed Rule 7.33 (Capacity Codes) would establish requirements for capacity code information that ETP Holders must include with every order. The proposed rule is based on NYSE Arca Rule 7.33-E and NYSE American Rule 7.33E without any substantive differences.
- Proposed Rule 7.34 (Trading Sessions) would specify trading sessions on the Exchange. Similar to NYSE Arca, the Exchange proposes that on the Pillar trading platform, it would have Early, Core, and Late Trading Sessions. However, the Exchange proposes that the Early Trading Session would begin at 7:00 a.m. Eastern Time, which is when the NYSE American Early Trading Session begins.[95] Otherwise, the Exchange proposes Rule 7.34 based on NYSE Arca Rule 7.34-E with the following substantive differences to reflect that it would not operate any auctions:
  - To designate Rule 7.34-E(c)(1)(B) as "Reserved;"
  - In proposed Rule 7.34(c)(1)(C), to refer to orders being rejected "if entered before the Core Trading Session" instead of orders being rejected "if entered before the Auction Processing Period for the Core Open Auction;"
  - In proposed Rules 7.34(c)(1)(D), (c)(2)(A), and (c)(2)(B), to not include phrases referring to "securities that are not eligible for an auction on the Exchange" or "securities that are not eligible to [sic] the Core Open Auction" from NYSE Arca Rules 7.34-E(c)(1)(D), (c)(2)(A), and (c)(2)(B); and

95 See NYSE American Rule 7.34E(a)(1).

- In proposed Rule 7.34(c)(2)(C), to refer to orders being rejected "if entered before the Late Trading Session" instead of being rejected "if entered before the Auction Processing Period for the Closing Auction."

- Proposed Rule 7.36 (Order Ranking and Display) would establish requirements for how orders would be ranked and displayed at the Exchange. The proposed rule is based on NYSE Arca Rule 7.36-E and NYSE American Rule 7.36E without any substantive differences.
- Proposed Rule 7.37 (Order Execution and Routing) would establish requirements for how orders would execute and route at the Exchange, the data feeds that the Exchange would use, and Exchange requirements under the Order Protection Rule and the prohibition on locking and crossing quotations in NMS Stocks. This proposed rule is based on NYSE Arca Rule 7.37-E without any substantive differences. The Exchange proposes a non-substantive difference to proposed Rule 7.37(e) to reflect the amended names of exchanges in the chart listing market centers.
- Proposed Rule 7.38 (Odd and Mixed Lot) would establish requirements relating to odd lot and mixed lot trading on the Exchange. The proposed rule is based on NYSE Arca Rule 7.38-E without any substantive differences.[96]
- Proposed Rule 7.40 (Trade Execution and Reporting) would establish the Exchange's obligation to report trades to an appropriate consolidated transaction

96 The Exchange does not propose a rule based on either NYSE Arca Rule 7.39-E (concerning adjustment of open orders, which relates to good-til-cancelled orders, which would not be available on the Exchange) or NYSE American Rule 7.39E (concerning an off-hours trading facility, which would not be offered on the Exchange) and will designate Rule 7.39 as "Reserved."

reporting system. The proposed rule is based on NYSE Arca Rule 7.40-E and NYSE American Rule 7.40E without any substantive differences.

- Proposed Rule 7.41 (Clearance and Settlement) would establish requirements that all trades be processed for clearance and settlement on a locked-in and anonymous basis. The proposed rule is based on NYSE American Rule 7.41E without any differences.

Section 4 of proposed Rule 7 would establish the Operation of a Routing Broker. Specifically, proposed Rule 7.45 (Operation of a Routing Broker) would establish the outbound and inbound function of the Exchange's routing broker and the cancellation of orders and the Exchange's error account. The proposed rule is based on NYSE Arca Rule 7.45-E and NYSE American Rule 7.45E without any substantive differences. As noted above, the Exchange's affiliation with Archipelago Securities LLC would be addressed in proposed Rule 7.45. The Exchange therefore proposes to delete current Rule 2.10 [sic].

Section 5 of proposed Rule 7 would establish requirements relating to the Plan to Implement a Tick Size Pilot Program. Proposed Rule 7.46 (Tick Size Pilot Plan) would specify such requirements. The proposed rule is based on NYSE Arca Rule 7.46-E with a proposed substantive difference not to include cross references to a Retail Liquidity Program as the Exchange would not adopt the Retail Liquidity Program on Pillar. The Exchange also proposes to designate proposed Rules 7.46(f)(4) as "Reserved" because the Exchange would not support Retail Price Improvement Orders on Pillar.

Section 6 of proposed Rule 7 would establish requirements for contracts in securities.

- Proposed Rule 7.60 (Definitions and General Provisions) would establish definitions used for purposes of Section 6 of Rule 7 and is based on NYSE Arca Rule 7.60-E without any differences.
- Proposed Rule 7.61 would provide for requirements relating to ETP contracts of the Exchange and that such contracts are binding. This proposed rule is based on NYSE Arca Rule 7.61-E without any differences.
- Proposed Rule 7.62 (Delivery of Securities) would establish requirements relating to the book entry settlement of transactions. This proposed rule text is based on NYSE Arca Rule 7.62-E(b). Because the Exchange is not a listing venue, the Exchange does not propose rule text based on NYSE Arca Rule 7.62-E(a) or (c) as these rules relate to requirements for securities listing on an exchange.

Because Rule 7 would set forth all rules relating to trading on the Exchange, the Exchange proposes to delete the rules in Chapter XI in their entirety. In addition, because Rule 7 would set forth rules relating to comparison and settlement, the Exchange proposes to delete the rules in Chapter XIII (Miscellaneous Provisions) in their entirety. Finally, because the Exchange would use its affiliate, Archipelago Securities LLC, as its routing broker, the Exchange also proposes to delete Rule 2.11 (NSX Securities, LLC).

Rule 10 – Disciplinary Proceedings, Other Hearings and Appeals

To facilitate the re-launch of trading on the Exchange and further facilitate rule harmonization among SROs, the Exchange proposes Rule 10.8000 and Rule 10.9000 Series based on NYSE American Rule 8000 and Rule 9000 Series of the Office Rules, with certain

modifications, as described below.[97] NYSE American Rule 8000 and Rule 9000 Series are disciplinary rules that are, with certain exceptions, substantially the same as the Rule 8000 Series and Rule 9000 Series of the NYSE and FINRA.[98]

Unless otherwise specified below, the individual rules in the proposed Rule 10.8000 and 10.9000 Series are based on the individual rules of the counterpart NYSE American Rule 8000 and 9000 Series without any differences, except that the Exchange:

- would use the term "ETP Holder" rather than "member and member organization" or "member organization or ATP Holder" as is used by NYSE American, consistent with the Exchange's other proposed rules;
- would use the term "Associated Person" or "Person Associated with an ETP Holder," which are defined terms on the Exchange, rather than the term "covered person;"
- would not utilize Floor-Based Panelists referenced in NYSE American Rules 9120(q), 9212(a)(2)(B), 9221(a)(3), 9231(b)(2) and (c)(2), and 9232(c) because the Exchange will not have a trading floor;
- would not adopt NYSE American Rules 8001 and 9001, which describe the effective date of the NYSE American rules;

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97 The Exchange notes that all but one of its ETP Holders before it ceased trading operations in February 2017 were members of FINRA, and as such were subject to FINRA's Rule 8000 Series and Rule 9000 Series. As a result, virtually all former ETP Holders were already subject to the proposed rules described herein.

98 Securities Exchange Act Release Nos. [sic] 77241 (February 26, 2016), 81 FR 11311 (March 3, 2016) (SR-NYSEMKT-2016-30) ("2016 Notice"). See also Securities Exchange Act Release Nos. [sic] 78959 (September 28, 2016), 81 FR 68481 (October 4, 2016) (SR-NYSEMKT-2016-71) (Notice). The NYSE American disciplinary rules were implemented on April 15, 2016. See NYSE American Information Memorandum 16-02 (March 14, 2016).

- would not retain the text of NYSE American's legacy minor rules; and
- proposes non-substantive grammatical differences in specified rules, described below, which do not change the meaning of the proposed rule text as compared to the NYSE American version of the same rule.

Proposed Rule 10.8000 Series

The Proposed Rule 10.8000 Series would address Investigations and Sanctions. Proposed Rule 10.8100 (General Provisions) would include the following:

- Proposed Rule 10.8120 (Definitions) would provide that unless otherwise provided, terms used in the Rule 10.8000 Series would have the meaning as defined in applicable Exchange rules and that the terms "Adjudicator" and "Exchange" [sic] would have the meaning in proposed Rule 10.9120. The Exchange proposes non-substantive grammatical differences for paragraphs (a) and (b) as compared to NYSE American Rule 8120(a) and (b).
- Proposed Rule 10.8130 (Retention of Jurisdiction) would set forth retention of jurisdiction provisions that are the same as NYSE American Rule 8130, except for a non-substantive grammatical difference in paragraph (b) to add the word "who" and the cross-reference in paragraph (b)(1) that would be conformed to the Exchange's rules. Under the proposed rule change, the Exchange would retain jurisdiction to file a complaint against an ETP Holder or Associated Person for two years after such ETP Holder's or Associated Person's status is terminated.

Proposed Rule 10.8200 (Investigations) would set forth the following rules:[99]

- Proposed Rule 10.8210 (Provisions of Information and Testimony and Inspection and Copying of Books) would set forth procedures for the provision of information and testimony and inspection and copying books by the Exchange. In addition to describing requirements relating to the process for such inspection and copying, this proposed rule would provide authority for the Exchange to enter into regulatory cooperation agreements with other SROs and regulators (proposed Rule 10.8210(b)). The Exchange proposes non-substantive grammatical differences from NYSE American Rule 8210 in subsection (g) and Commentary .01.
- Proposed Rule 10.8211 (Automated Submission of Trading Data Requested by the Exchange) would set forth the procedures for electronic blue sheets [sic].

Proposed Rule 10.8300 (Sanctions) would set forth the following rules:

- Proposed Rule 10.8310 (Sanctions for Violations of the Rules) would set forth the range of sanctions that could be imposed in connection with disciplinary actions under the proposed rule change.
- Proposed Rule 10.8311 (Effect of a Suspension, Revocation, Cancellation, Bar or Other Disqualification) would provide that if the Commission or the Exchange imposed a suspension, revocation, cancellation or bar on an Associated Person, an ETP Holder may not permit such person to remain associated, and, in the case of

99 NYSE American Rules 8212, 8213, and 8312 are marked as "Reserved." To maintain consistency with NYSE American's rule numbering, the Exchange proposes to designate proposed Rules 10.8212, 10.8213, and 10.8312 as "Reserved."

a suspension, may not make any remuneration that results from any securities transaction.

- Proposed Rule 10.8313 (Release of Disciplinary Complaints, Decisions and Other Information) would provide that the Exchange would publish all final disciplinary decisions issued under the proposed Rule 9000 [sic] Series, other than minor rule violations, on its website.
- Proposed Rule 10.8320 (Payment of Fines, Other Monetary Sanctions, or Costs; Summary Action for Failure to Pay) would govern payment of fines and other monetary sanctions or costs and provide for a summary action for an ETP Holder's failure to pay.[100] The Exchange proposes a non-substantive grammatical difference from NYSE American Rule 8320 in paragraph (b)(1).
- Proposed Rule 10.8330 (Costs of Proceedings) would provide that a disciplined ETP Holder or Associated Person may be assessed the costs of a proceeding, which are determined by the Adjudicator.

Proposed Rule 10.9000 Series

Proposed Rule 10.9000 Series sets forth the Exchange's proposed Code of Procedure.

Proposed Rule 10.9100 Series (Application and Purpose)

Proposed Rule 10.9100 Series (Application and Purpose) would set forth the following rules:

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100 The Exchange does not propose to adopt NYSE American Rule 8320(d), which addresses transition from its legacy disciplinary rules. The Exchange does not currently have any pending disciplinary actions under its current disciplinary rules, and therefore does not need to retain those rules for a transition period.

- Proposed Rule 10.9110 (Application) would state the types of proceedings to which the proposed Rule 10.9000 Series would apply (each of which is described below) and the rights, duties, and obligations of ETP Holders and Associated Persons, and would set forth the defined terms and cross-references. The Exchange proposes a non-substantive grammatical difference from NYSE American Rule 9110 in paragraph (c).
- Proposed Rule 10.9120 (Definitions) would set forth definitions that would be applicable to the Rule 10.9000 Series. The definitions are based on definitions set forth in NYSE American Rule 9120, except that the Exchange would not define the terms "Board of Directors," "covered person," "Exchange, and "Floor-Based Panelist" in proposed Rule 10.9120 and would designate paragraphs (b), (g), (n), and (q) as "Reserved." The terms "Board of Directors" and "Exchange" would already be defined in proposed Rule 1.1, and therefore the Exchange does not need to separately define these terms in proposed Rule 10.9120. The Exchange does not believe that it needs to define the term "covered person" because the Exchange already has a defined term of "Person Associated with an ETP Holder" or "Associated Person," and use of that term would address all persons subject to Exchange jurisdiction under proposed Rule 10 Series. The term "Interested Staff" in paragraph (t) contains a non-substantive grammatical difference from the NYSE American version and the definition of "Party" in paragraph (w)(2) includes "or Associated Person" after "ETP Holder." Finally, the Exchange would not include the term "Floor-Based Panelist" because the Exchange would not have a trading floor.

Proposed Rule 10.9130 (Service; Filing of Papers)

Proposed Rule 10.9130, setting forth proposed Rules 10.9131 through 10.9138, would govern the service of a complaint or other procedural documents under the Rules.

Proposed Rule 10.9131 would set forth the requirements for serving a complaint or document initiating a proceeding. Proposed Rule 10.9132 would cover the service of orders, notices, and decisions by an Adjudicator. Proposed Rule 10.9133 would govern the service of papers other than complaints, orders, notices, or decisions. Proposed Rule 10.9134 would describe the methods of service and the procedures for service. Proposed Rule 10.9135 would set forth the procedure for filing papers with an Adjudicator. Proposed Rule 10.9136 would govern the form of papers filed in connection with any proceeding under the proposed Rule 10.9200 and 10.9300 Series. Proposed Rule 10.9137 would state the requirements for and the effect of a signature in connection with the filing of papers. Finally, proposed Rule 10.9138 would establish the computation of time.

Proposed Rule 10.9140 (Proceedings)

Proposed Rules 10.9140, setting forth proposed Rules 10.9141 through 10.9148, would govern the conduct of disciplinary proceedings.

Proposed Rule 10.9141 would govern appearances in a proceeding, notice of appearances, and representation. Proposed Rule 10.9141 would permit a Respondent to represent himself or be represented by a bar-admitted U.S. attorney. The proposed rule also permits a partnership to be represented by a partner and a corporation, trust, or association to be represented by an officer of such entity. Proposed Rule 10.9141 requires an attorney or representative to file a notice of appearance. Proposed Rule 10.9142 would require an attorney or representative to file a motion to withdraw.

Proposed Rule 10.9143 would set forth requirements relating to ex parte communications with an Adjudicator or Exchange employee involved in a proceeding. The Exchange proposes non-substantive grammatical differences from NYSE American Rule 9143 in paragraphs (c) and (e)(3).

Proposed Rule 10.9144 would establish the separation of functions for Interested Staff and Adjudicators and provide for waivers.

Proposed Rule 10.9145 would provide that formal rules of evidence would not apply in any proceeding brought under the proposed Rule 10.9000 Series.

Proposed Rule 10.9146 would govern motions a Party may make and requirements for responses and formatting. The Exchange proposes non-substantive grammatical differences from NYSE American Rule 9146 in paragraph (b)(2).

Proposed Rule 10.9147 would provide that Adjudicators may rule on procedural matters.

Finally, proposed Rule 10.9148 would generally prohibit interlocutory review, except as provided in proposed Rule 10.9280 for contemptuous conduct.

Proposed Rule 10.9150 (Exclusion from Rule 10.9000 Series Proceeding)

Proposed Rule 10.9150 would provide that a representative can be excluded by an Adjudicator for improper or unethical conduct. The Exchange proposes a non-substantive difference to refer to "improper conduct" in paragraph (a) rather than limiting term of "improper professional conduct," which is in NYSE American Rule 9150.

Proposed Rule 10.9160 (Recusal or Disqualification)

Proposed Rule 10.9160 would provide that no person may act as an Adjudicator if he or she has a conflict of interest or bias, or circumstances exist where his or her fairness could reasonably be questioned. In such case, the person must recuse himself or may be disqualified.

The proposed rule would cover the recusal or disqualification of an Adjudicator, the Board, or a Director. Proposed Rules 9160(b) [sic], (c), and (d) are designated as "Reserved" to maintain consistency with NYSE American's rule numbering.

Proposed Rules 10.9200 Series (Disciplinary Proceedings)

Proposed Rule 10.9200 would cover disciplinary proceedings.

Proposed Rule 10.9210 (Complaint and Answer) would set forth the following rules:

- Proposed Rule 10.9211 (Authorization of Complaint) would permit Enforcement to request the authorization of the Chief Regulatory Officer ("CRO") to issue a complaint against an ETP Holder or Associated Person, thereby commencing a disciplinary proceeding.
- Proposed Rule 10.9212 (Complaint Issuance – Requirements, Service, Amendment, Withdrawal, and Docketing) would set forth the requirements of the complaint, amendments to the complaint, withdrawal of the complaint, and service of the complaint. Unlike NYSE American Rule 9212, because the Exchange would not have a floor, the proposed rule would not provide for Enforcement to select one Floor-Based Panelist.
- Proposed Rule 10.9213 (Assignment of Hearing Officer and Appointment of Panelists to Hearing Panel or Extended Hearing Panel) would provide for the appointment of a Hearing Officer and Panelists by the Chief Hearing Officer.
- Proposed Rule 10.9214 (Consolidation or Severance of Disciplinary Proceedings) would permit the Chief Hearing Officer to sever or consolidate two or more disciplinary proceedings under certain circumstances and permit a Party to move for such action under certain circumstances. The Exchange proposes non-

substantive grammatical differences from NYSE American Rule 9214 in paragraphs (b) and (e).

- Proposed Rule 10.9215 (Answer to Complaint) would set forth requirements for answering a complaint, including form, service, notice, content, defenses, amendments, default, and timing.
- Proposed Rule 10.9216 (Acceptance, Waiver, and Consent; Procedure for Imposition of Fines for Minor Violation(s) of Rules) would establish the acceptance, waiver, and consent ("AWC") procedures by which a Respondent, prior to the issuance of a complaint, may execute a letter accepting a finding of violation, consenting to the imposition of sanction(s), and agreeing to waive such Respondent's right to a hearing, appeal, and certain other procedures.[101] It also would establish procedures for executing a minor rule violation plan letter. The Exchange proposes non-substantive grammatical differences from NYSE American Rule 9216 in paragraph (a).

Together with proposed Rule 10.9216(b), proposed Rule 10.9217 would be the Exchange's Minor Rule Violation Plan ("MRVP") and would set forth the list of rules under which an ETP Holder or Associated Person may be subject to a fine under a MRVP as described in proposed Rule 10.9216(b).

The Exchange proposes to adopt the list of rules and associated fine levels for minor rule violations set forth in NYSE American Rule 9217, which sets forth NYSE American's MRVP. As noted above, the Exchange does not propose rule text based on the legacy trading rules

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[101] Proposed Rule 10.9270 would address settlement procedures after the issuance of a complaint.

contained in NYSE American Rule 9217(c), which are unique to NYSE American. The Exchange further would not include rule text based on NYSE American Rule 9217(e), which sets forth NYSE American's legacy MRVP and includes fines for options-related rules, which are not applicable on the Exchange. Finally, the Exchange does not propose rule text based on NYSE American's Rule 9217 "List of Reports Required to be Filed with the Exchange by ATP Holders and Filing Deadlines" as these relate to fines charged for failure to timely file financial reports by ETP Holders designated to the Exchange. Because the Exchange is not currently a designated examining authority ("DEA") for any ETP Holders, these fines would be inapplicable to the Exchange.

Proposed Rule 10.9217(a) titled "Trading Rule Violations" would set forth the following eligible trading rule violations:

- Short Sale Rules (Rule 7.16).
- Failure to maintain continuous, two-sided Q Orders in those securities in which the Market Maker is registered to trade (Rule 7.23(a)(1)).
- Failure to comply with Authorized Trader requirements (Rule 7.30).
- Acting as a Market Maker in a security without being registered as such as required by Rule 7.20(a).

Proposed Rule 10.9217(b), titled "Record Keeping and Other Minor Rule Violations," would set forth minor rule violations relating to recordkeeping. The proposed substantive rule violations are based on NYSE American Rule 9217(b) with non-substantive differences to cross-reference the applicable Exchange rule, as follows:[102]

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102 See NYSE American Rule 9217(a) (NYSE American Rules 7.16, 7.20, 7.23, 7.30). Proposed Rules 7.16 (Short Sales), 7.20 (Registration of Market Makers) and 7.23

- Failure to comply with the employee registration or other requirements of Rule 2.2.
- Failure to comply with the books and records requirements of Rule 11.4.1.
- Failure to comply with the requirements for preventing the misuse of material nonpublic information as set forth in Rule 11.5.5 and its Commentaries.

Proposed Rule 10.9217(c) is based on NYSE American Rule 9217(d) without any substantive differences and would set forth the fine schedule that would be applicable to the Exchange's MRVP. Proposed Rule 10.9217(c)(1) would set forth the fine levels for trading rule violations as follows:

- Violations of Rule 7.16 would be eligible for a $500 first level fine, a $1,000 second level fine, and a $2,500 third level fine;
- Violations of Rule 7.23(a)(1) would be eligible for a $250 first level fine, a $500 second level fine, and a $1,000 third level fine;
- Violations of Rule 7.30 would be eligible for a $1,000 first level fine, a $2,500 second level fine, and a $3,500 third level fine; and
- Violations of Rule 7.20(a) would be eligible for a $250 first level fine, a $500 second level fine, and a $1,000 third level fine.

(Obligations of Market Makers) are based on the NYSE American Rules (which were in turn based on analogous NYSE Arca rules) with the same numbers without any substantive differences. See also NYSE American Rule 9217(b) (NYSE American Rules 2.21E, 2.24E and 6.3E). Proposed NYSE National Rule 11.5.5 is based on NYSE American Rule 6.3E without any substantive differences. Proposed NYSE National Rules 2.2 (Obligations of ETP Holders and the Exchange) and 11.4.1 (Books and Records Requirements) address the same subject matter as NYSE American Rules 2.21E and 2.24E. Finally, proposed Rule 9217(a) [sic] would not incorporate an eligible rule based on NYSE American Rule 6.15E prohibiting prearranged trades, which the Exchange is not adopting.

Proposed Rule 10.9217(c)(2) would set forth the fine levels for the record keeping and other minor rule violations as follows:

- Violations of Rule 11.5.5 would be eligible for a $2,000 first level fine, a $4,000 second level fine, and a $5,000 third level fine;[103]
- Violations of Rule 11.4.1 would be eligible for a $2,000 first level fine, a $4,000 second level fine, and a $5,000 third level fine; and
- Violations of Rule 2 would be eligible for a $1,000 first level fine, a $2,500 second level fine, and a $3,500 third level fine.[104]

Proposed Rule 10.9220 (Request for Hearing; Extensions of Time, Postponements, Adjournments)

Proposed Rules 10.9221 through 10.9222 would describe how a Respondent can request a hearing, the notice of a hearing, and timing considerations. Proposed Rule 10.9221 provides that a Hearing Officer generally must provide at least 28 days' notice of the hearing.

Proposed Rule 10.9230 (Appointment of Hearing Panel, Extended Hearing Panel)

Proposed Rule 10.9230 would set forth proposed Rules 10.9231 through 10.9235, which would establish how Hearing Panels, Extended Hearing Panels, Replacement Hearing Officers, Panelists, and Replacement Panelists are appointed and their composition and criteria for selection.

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103 The proposed rule would adopt NYSE American's maximum $5,000 fine for minor rule violations. The Exchange's current maximum fine for minor rule violations is $2,500. See Rule 8.15(a).

104 The Exchange proposes to add a footnote 1 providing that, in addition to the specified fines, the Exchange may require a violator to remit all fees that it should have paid to the Exchange pursuant to Rule 2.2 [sic]. The proposed footnote would be identical to footnote 1 in NYSE American Rule 9217(d)(2).

- Proposed Rule 10.9231 would set forth the role of the Chief Hearing Officer to appoint a Hearing Panel or an Extended Hearing Panel.
- Proposed Rule 10.9232 would set forth the criteria for the selection of Panelists and Replacement Panelists. Because the Exchange would not have a Floor, the Exchange proposes a difference from NYSE American Rule 9232 by not referring to "Floor-based Panelists." The proposed rule would also replace the term "hearing board" with the terms "Business Conduct Committee" or "BCC" to reflect the Exchange's terminology as compared to NYSE American regarding who may be a Panelist.
- Proposed Rules 10.9233 and 10.9234 would establish the processes for recusal and disqualification of Hearing Officers, Hearing Panels, or Extended Hearing Panels.
- Proposed Rule 10.9235 would set forth the Hearing Officer's duties and authority in detail.

Proposed Rule 10.9240 (Pre-hearing Conference and Hearing [sic])

Proposed Rules 10.9241 through 10.9242 would establish the substantive and procedural requirements for pre-hearing conferences and pre-hearing submissions.

Proposed Rule 10.9250 (Discovery)

Proposed Rule 10.9250 would set forth proposed Rules 10.9251 through 10.9253, which would address discovery, including the requirements and limitations relating to the inspection and copy of documents in the possession of Interested Staff, requests for information and limitations on such requests, and the production of witness statements and any harmless error relating to the production of such witness statements.

Proposed Rule 10.9251 would set forth requirements relating to inspection and copying of documents prepared or obtained by Interested Staff in connection with an investigation [sic]

Under proposed Rule 10.9252, a Respondent could request that the Exchange invoke proposed Rule 10.8210 to compel the production of Documents or testimony at the hearing if the Respondent can show that certain standards are met, e.g. [sic], that the information sought is relevant, material, and non-cumulative.

Under proposed Rule 10.9253, a Respondent could file a motion to obtain certain witness statements.

Proposed Rule 10.9260 (Hearing and Decision)

Proposed Rule 10.9260 would set forth proposed Rules 10.9261 through 10.9269, which would relate to hearings and decisions.

- Proposed Rule 10.9261 would generally require the Parties to submit a list [sic] of documentary evidence and witnesses no later than 10 days before the hearing.
- Proposed Rule 10.9262 would require persons subject to the Exchange's jurisdiction to testify under oath or affirmation at a hearing.
- Proposed Rule 10.9263 would authorize the Hearing Officer to exclude irrelevant, immaterial, or unduly repetitious or prejudicial evidence and permit a Party to object to the admission of evidence; excluded evidence would be part of the record.
- Proposed Rule 10.9264 would allow Parties to file a motion for summary disposition under certain circumstances and would describe the procedures for filing and ruling on such motion.

- Proposed Rule 10.9265 would require that the hearing be recorded by a court reporter, that a transcript be prepared and made available for purchase, and that a Party be permitted to seek a correction of the transcript from the Hearing Officer.
- Proposed Rule 10.9266 would authorize the Hearing Officer to require a post-hearing brief or proposed finding of facts and conclusions of law and would outline the form and timing for such submissions.
- Proposed Rule 10.9267 would detail the required contents of the hearing record and the treatment of any supplemental documents attached to the record.
- Proposed Rule 10.9268 would set forth the timing and the contents of a decision of the Hearing Panel or Extended Hearing Panel and the procedures for a dissenting opinion, service of the decision, and any requests for review.
- Finally, proposed Rule 10.9269 would establish the process for the issuance and review of default decisions by a Hearing Officer when a Respondent fails to timely answer a complaint or fails to appear at a pre-hearing conference or hearing where due notice has been provided. A Party may, for good cause shown, file a motion to set aside a default decision.[105]

Proposed Rule 10.9270 (Settlement Procedure)

Proposed Rule 10.9270 would provide for a settlement procedure for a Respondent who has been notified that a proceeding has been instituted against him or her. The proposed rule would set forth requirements relating to both contested and uncontested offers of settlement.

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[105] Under the proposed rule change, if a respondent admits the charges or they are not in dispute, the parties could utilize the AWC procedure under proposed Rule 10.9216.

Proposed Rule 10.9280 (Contemptuous Conduct)

Proposed Rule 10.9280 would set forth sanctions for contemptuous conduct by a Party or attorney or other representative, which may include exclusion from a hearing or conference, and sets forth a process for reviewing such exclusions.

Proposed Rule 10.9290 (Expedited Disciplinary Proceedings)

Under proposed Rule 10.9290, for any disciplinary proceeding, the subject matter of which also is subject to a temporary cease and desist proceeding initiated pursuant to proposed Rule 10.9810 or a temporary cease and desist order, hearings would be required to be held and decisions rendered at the earliest possible time.

Proposed Rule 10.9291 (Permanent Cease and Desist Orders)

Proposed Rule 10.9291 would set forth the requirements for issuing a permanent cease and desist order under proposed Rules 10.9268, 10.9269, or 10.9270.

Proposed Rule 10.9300 Series (Review of Disciplinary Proceedings by Exchange Board of Directors)

Proposed Rule 10.9300 includes proposed Rule 10.9310, which would set forth the Exchange's Board review process, including the process for a request for review of any determination or penalty and review by the Exchange's Board.[106]

Proposed Rule 10.9500 Series (Other Proceedings)

The proposed Rule 10.9500 Series would set forth all other proceedings under the Exchange Rules [sic]

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106 The Exchange does not trade options and therefore does not propose to distinguish between appeals panels for equity and options matters as in NYSE American Rule 9310(b).

Proposed Rule 10.9520 (Eligibility Proceedings) would set forth proposed Rules 10.9521 through 10.9527, which would govern eligibility proceedings for persons subject to statutory disqualifications that are not FINRA members.

Proposed Rule 10.9521 would add certain definitions relating to eligibility proceedings, including "Application," "disqualified ETP Holder," "disqualified person," and "sponsoring ETP Holder." Proposed Rule 10.9522 would govern the initiation of an eligibility proceeding by the Exchange and the obligation for an ETP Holder to file an application to initiate an eligibility proceeding if it has been subject to certain disqualifications. Proposed Rule 10.9523 would allow the Department of Member Regulation to recommend a supervisory plan to which the disqualified ETP Holder, sponsoring ETP Holder, and/or disqualified person, as the case may be, may consent and by doing so, waive the right to hearing or appeal if the plan is accepted and the right to claim bias or prejudgment, or prohibited ex parte communications. If such a supervisory plan were rejected, proposed Rule 10.9524 would allow a request for review by the applicant to the Board. Proposed Rule 10.9527 would provide that a filing of an application for review would not stay the effectiveness of final action by the Exchange unless the Commission otherwise ordered. To maintain consistency with NYSE American's rule numbering, proposed Rules 10.9525 and 10.9526 would be designated "Reserved."

Proposed Rule 10.9550 (Expedited Proceedings)

Proposed Rule 10.9550 would set forth proposed Rule 10.9552 through 10.9560 and would govern expedited proceedings.

- Proposed Rule 10.9551 would be marked "Reserved" because the Exchange has not adopted a rule analogous to NYSE American Rules 2210 - Equities (Communications with the Public).

- Proposed Rule 10.9552 would establish procedures and consequences in the event that an ETP Holder or Associated Person failed to provide any information, report, material, data, or testimony requested or required to be filed under the Exchange's rules, or failed to keep its membership application or supporting documents current.
- Proposed Rule 10.9554[107] would contain similar procedures and consequences as proposed Rule 10.9552 relating to a failure to comply with an arbitration award or related settlement or an Exchange order of restitution or Exchange settlement agreement providing for restitution.
- Proposed Rule 10.9555 would govern the failure to meet the eligibility or qualification standards or prerequisites for access to services offered by the Exchange.
- Proposed Rule 10.9556 would provide procedures and consequences for a failure to comply with temporary and permanent cease and desist orders issued under proposed Rules 10.9200, 10.9300 or 10.9800 Series.
- Proposed Rule 10.9557 would allow the Exchange to issue a notice directing an ETP Holder to comply with the net capital provisions of Exchange Act Rule 15c3-1.[108] As noted above, the Exchange is not currently the DEA for any ETP Holders, but proposes this rule should it become a DEA.

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107 Proposed Rule 10.9553 would be designated "Reserved" to maintain consistency with NYSE American's rule numbering.

108 See 17 CFR 240.15c3-1. The Exchange does not have rules analogous to NYSE American rules 4110 – Equities (Capital Compliance), 4120 – Equities (Regulatory Notification and Business Curtailment), or 4130 – Equities (Regulation of Activities of Section 15C Member Organizations Experiencing Financial and/or Operational

- Proposed Rule 10.9558 would allow the Exchange's CRO or such other senior officer as the CRO may designate to provide written authorization to the Exchange staff to issue a written notice for a summary proceeding for an action authorized by Section 6(d)(3) of the Exchange Act.
- Proposed Rule 10.9559 would set forth uniform hearing procedures for all expedited proceedings under the proposed Rule 10.9550 Series.
- Proposed Rule 10.9560 would set forth procedures for issuing suspension orders, immediately prohibiting a member organization or Associated Person from conducting continued disruptive quoting and trading activity on the Exchange in violation of proposed Rule 11.12.11 (discussed below).

Proposed Rule 10.9600 Series (Procedures for Exemptions)

Proposed Rule 10.9600, setting forth proposed Rules 10.9610 through 10.9630, would describe procedures by which an ETP Holder could seek exemptive relief from proposed Rule 10.8211 (Automated Submission of Trading Data [sic]).

Under proposed Rule 10.9610, an ETP Holder seeking exemptive relief would be required to file a written application with the appropriate department or staff of the Exchange and provide a copy of the application to the CRO. Under proposed Rule 10.9620, after considering the application, the Exchange staff would be required to issue a written decision setting forth its findings and conclusions. The decision would be served on the Applicant pursuant to proposed Rules 10.9132 and 10.9134. Proposed Rule 10.9630 would set forth the appeal process for a decision issued under proposed Rule 10.9620.

Difficulties) referenced in NYSE American's version of proposed Rule 9557 [sic].

Proposed Rule 10.9700 Series

Rule 10.9700 would be marked "Reserved" to maintain consistency with NYSE American's rule numbering conventions.

Proposed Rule 10.9800 Series (Temporary Cease and Desist Orders)

Proposed Rule 10.9800, setting forth proposed Rule 10.9810 through 10.9870, would describe procedures for issuing temporary cease and desist orders.

- Proposed Rule 10.9810 would set forth the process for initiating a temporary cease and desist proceeding with respect to alleged violations of Section 10(b) of the Act, SEC Rules 10b-5 and 15g-1 through 15g-9, Rule 11.5 (if the alleged violation is unauthorized trading, or misuse or conversion of customer assets, or is based on violations of Section 17(a) of the Securities Act of 1933) or Rule 11.3.1 (Business Conduct of ETP Holders).[109]
- Proposed Rule 10.9820 would govern the appointment of a Hearing Officer and Panelists for a temporary cease and desist proceeding.
- Proposed Rule 10.9830 would set forth the procedures for a hearing relating to a temporary cease and desist proceeding.
- Proposed Rule 10.9840 would set forth the process for the Hearing Panel to issue a written decision stating whether a temporary cease and desist order would be imposed.

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[109] The Exchange does not have analogous rules to NYSE American rules 476(a)(5) or Rule 2020 - Equities referenced in NYSE American's version of proposed Rule 10.9810.

- Proposed Rule 10.9850 would set forth the process for a Respondent to apply to the Hearing Panel to have a temporary cease and desist order modified, set aside, limited, or suspended.
- Proposed Rule 10.9860 would authorize the initiation of a suspension or cancellation of a Respondent's association or membership under proposed Rule 10.9556 if the Respondent violated a temporary cease and desist order.
- Finally, proposed Rule 10.9870 would provide that temporary cease and desist orders issued under the proposed Rule 9800 [sic] Series would constitute final and immediately effective disciplinary sanctions imposed by the Exchange, and that the right to have any action under this rule series reviewed by the Commission would be governed by Section 19 of the Exchange Act.

Because Rule 10 would set forth all rules relating to discipline, suspension of an ETP Holder, and adverse actions, the Exchange proposes to delete the rules in Chapters VII, VIII and X in their entirety.

Rule 11 – Rules of Fair Practice; Books and Records; Supervision; Extensions of Credit; Trading Practice Rules

The Exchange proposes to maintain current NYSE National rules regarding rules of fair practice, books and records, supervision, extensions of credit, and trading practices. These rules are currently found in Chapters III, IV, V, VI, and XII, respectively, of the Exchange's rulebook. The Exchange proposes to relocate these rules to Rule 11 which under the Framework Filing is titled Business Conduct. To reflect the content of Rule 11, the Exchange proposes to rename Rule 11 as "Rules of Fair Practice; Books and Records; Supervision; Extensions of Credit; Trading Practices." In moving the rules, the Exchange proposes non-substantive differences to

change references from "Interpretations and Policies" to "Commentary," to use a different sub-paragraph numbering format, and to capitalize the term "Associated Person."[110]

Because all such rules would be relocated to Rule 11 and to maintain consistency with the current rulebook, the Exchange proposes that the sub-numbering of each such rule would be the same as the existing rule number. For example, current Rule 3.1 would be renumbered as Rule 11.3.1. By maintaining sub-numbering that aligns with existing rule numbers, ETP Holders that reference such rules in policies and procedures would not need to revise such policies and procedures because the rule requirements would map to the same number. Because the purpose of such sub-numbering is to align with existing rule numbers, the Exchange does not propose to designate any rules as "Reserved." Rather, the Exchange proposes to add sub-headings before each section of Rule 11 to describe which rules would be set forth in each set of sub-numbered rules.

The Exchange proposes to renumber the rules in Chapter III as follows and add a subheading before such rules that provides "Rules of Fair Practice":

- Rule 3.1 (Business Conduct of ETP Holders) would be renumbered as Rule 11.3.1 without any changes.
- Rule 3.2 (Violations Prohibited) would be renumbered as Rule 11.3.2 without any substantive changes.
- Rule 3.3 (Use of Fraudulent Devices) would be renumbered as Rule 11.3.3 without any changes.

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110 Current Exchange rules use an "(a)(i)(A)(1)" sub-paragraph numbering convention and the Exchange proposes to use an "(a)(1)(A)(i)" sub-paragraph numbering convention.

- Rule 3.4 (False Statements) would be renumbered as Rule 11.3.4 without any changes.
- Rule 3.5 (Advertising Practices) would be renumbered as Rule 11.3.5 without any substantive changes.
- Rule 3.6 (Fair Dealing with Customers) would be renumbered as Rule 11.3.6 without any substantive changes.
- Rule 3.7 (Recommendations to Customers) would be renumbered as Rule 11.3.7. The Exchange proposes one substantive amendment to delete the Interpretation and Policy .01 because it references a rule that would not be included in the Exchange's proposed rulebook.
- Rule 3.8 (The Prompt Receipt and Delivery of Securities) would be renumbered as Rule 11.3.8 without any substantive changes.
- Rule 3.9 (Charges for Services Performed) would be renumbered as Rule 11.3.9 without any changes.
- Rule 3.10 (Use of Information) would be renumbered as Rule 11.3.10 without any changes.
- Rule 3.11 (Publication of Transactions and Quotations) would be renumbered as Rule 11.3.11 without any changes.
- Rule 3.12 (Offers at Stated Prices) would be renumbered as Rule 11.3.12 without any changes.
- Rule 3.13 (Payment Designed to Influence Market Prices, Other than Paid Advertising) would be renumbered as Rule 11.3.13 without any changes.

- Rule 3.14 (Disclosure on Confirmations) would be renumbered as Rule 11.3.14 without any changes.
- Rule 3.15 (Disclosure of Control) – would be renumbered as Rule 11.3.15 without any changes.
- Rule 3.16 (Discretionary Accounts) would be renumbered as Rule 11.3.16 without any substantive changes.
- Rule 3.17 (Customer's Securities or Funds) would be renumbered as Rule 11.3.17 without any changes.
- Rule 3.18 (Prohibition Against Guarantees) would be renumbered as Rule 11.3.18 without any changes.
- Rule 3.19 (Sharing in Accounts; Extent Permissible) would be renumbered as Rule 11.3.19 without any changes.
- Rule 3.20 (Installment or Partial Payment Sales) would be renumbered as Rule 11.3.20 without any substantive changes.
- Rule 3.21 (Telephone Solicitation) would be renumbered as Rule 11.3.21 without any substantive changes.

The Exchange proposes to renumber the rules in Chapter IV as follows and add a subheading before such rules that provides "Books and Records":

- Rule 4.1 (Requirements) would be renumbered as Rule 11.4.1 without any changes.
- Rule 4.2 (Furnishing of Records) would be renumbered as Rule 11.4.2 without any substantive changes.

- Rule 4.3 (Record of Written Complaints) would be renumbered as Rule 11.4.3 without any changes.
- Rule 4.4 (Disclosure of Financial Condition) would be renumbered as Rule 11.4.4 without any changes.

The Exchange proposes to replace current Rule 5.5, as described below, and renumber the rules in Chapter V as follows and add a subheading before such rules that provides "Supervision":

- Rule 5.1 (Written Procedures) would be renumbered as Rule 11.5.1 without any changes.
- Rule 5.2 (Responsibility of ETP Holders) would be renumbered as Rule 11.5.2 without any changes.
- Rule 5.3 (Records) would be renumbered as Rule 11.5.3 without any changes.
- Rule 5.4 (Review of Activities and Annual Inspection) would be renumbered as Rule 11.5.4 without any changes.
- Rule 5.5 (Chinese Wall Procedures) would be replaced with proposed Rule 11.5.5 (Prevention of the Misuse of Material, Nonpublic Information), which is based on NYSE Arca Rule 11.3 and NYSE American Rule 6.3E. The proposed rule would provide for a principles-based approach to prevent the misuse of material non-public information. Because the Exchange would not trade options, the Exchange proposes that Commentary .01 to proposed Rule 11.5.5 would be based on Commentary .01 to NYSE American Rule 6.3E only. The Exchange's proposed Rule 5.5 would also include a non-substantive difference from the NYSE Arca and NYSE American rules on which it is based by not including rule text based

on Commentary .02 to NYSE Arca Rule 11.3 or Commentary .02 to NYSE American Rule 6.3 because the Exchange already has a rule defining the term "associated person." Finally, Commentary .04 to proposed Rule 11.5.5 would have a non-substantive differences compared to NYSE Arca Rule 11.3 and NYSE American Rule 6.3E because it would refer to ETP Holders acting as a registered market maker in UTP Exchange Traded Products, rather than refer to securities listed on the Exchange under Rules 5 and 8.

Proposed Rule 11.5.5 would require every ETP Holder to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by such ETP Holders. For purposes of this requirement, the misuse of material, non-public information would include, without limitation, to [sic] the following:

> (a) Trading in any securities issued by a corporation, or in any related securities or related options or other derivatives securities while in possession of material, non-public information concerning that issuer; or
>
> (b) trading in a security or related options or other derivatives securities, while in possession of material, non-public information concerning imminent transactions in the security or related securities; or
>
> (c) disclosing to another person or entity any material, non-public information involving a corporation whose shares are publicly traded or an imminent transaction in an underlying security or related securities for the purpose of facilitating the possible misuse of such material, non-public information.

- Rule 5.6 (Anti-Money Laundering Compliance Program) would be renumbered as Rule 11.5.6 without any substantive changes.
- Rule 5.7 (Annual Certification of Compliance and Supervisory Processes) would be renumbered as Rule 11.5.7 without any substantive changes.

The Exchange proposes renumber the rules in Chapter VI as follows and add a subheading before such rules that provides "Extensions of Credit":

- Rule 6.1 (Extensions of Credit – Prohibitions and Exemptions) would be renumbered as Rule 11.6.1 without any substantive changes.
- Rule 6.2 (Day Trading Margin) would be renumbered as Rule 11.6.2 without any substantive changes. The Exchange proposes to update internal cross references in the rule to Rule 11.6.1(c) instead of Rule 4.2(c), which rule no longer exists.

The Exchange proposes to replace current Rule 12.6, as described below, and proposes to renumber the rules in Chapter XII as follows and add a subheading before such rules that provides "Trading Practices":

- Rule 12.1 (Market Manipulation) would be renumbered as Rule 11.12.1 without any changes.
- Rule 12.2 (Fictitious Transactions) would be renumbered as Rule 11.12.2 without any substantive changes.
- Rule 12.3 (Excessive Sales by an ETP Holder) would be renumbered as Rule 11.12.3 without any changes.
- Rule 12.4 (Manipulative Transactions) would be renumbered as Rule 11.12.4 without any changes.

- Rule 12.5 (Dissemination of False Information) would be renumbered as Rule 11.12.5 without any changes.
- Current Rule 12.6 (Customer Priority) would be replaced with proposed Rule 11.12.6 (Prohibition of Trading Ahead of Customer Orders), which is based on NYSE Arca Rule 9.5320, NYSE American 5320- Equities, and NYSE Rule 5320. These rules are based on FINRA Rule 5320. The Exchange believes that replacing current Rule 12.6 with a rule based on the rules of FINRA, NYSE Arca, NYSE American, and NYSE would promote cross-market surveillance and enhance FINRA's ability to conduct surveillance and investigations on behalf of the Exchange under a regulatory services agreement.
- Rule 12.7 (Joint Activity) would be renumbered as Rule 11.12.7 without any changes.
- Rule 12.8 (Influencing the Consolidated Tape) would be renumbered as Rule 11.12.8 without any changes.
- Rule 12.9 (Options) would be renumbered as Rule 11.12.9 without any changes.
- Rule 12.10 (Best Execution) would be renumbered as Rule 11.12.10 without any substantive changes. The Exchange proposes to update the internal reference in the rule from Exchange Act Rule 11Ac1-4, which was the Order Display Rule, to Rule 604 of Regulation NMS, which is the current Order Display Rule.
- The Exchange does not propose to retain current Rules 12.11 or Rule 12.12. Rule 12.11, relating to trading suspensions, would be superseded by proposed Rule 7.13, which would provide authority for the Board or Exchange President to suspend trading in securities traded on the Exchange. Rule 12.12 relating to

publication of transactions and changes, would be superseded by proposed Rule 7.40, as described above.

Because the current rules would be renumbered, the Exchange proposes to delete Chapters III, IV, V, VI, and XII of the current rulebook.

Finally, the Exchange proposes new Rule 11.12.11 based on NYSE American Rule 5220 – Equities, NYSE Rule 5220, and NYSE Arca Rule 11.21, which in turn are modeled on Commentary .03 to FINRA Rule 5210, that defines and prohibits two types of disruptive quoting and trading activity on the Exchange. The Exchange proposes to include this rule under Rule 11.12 sub-numbering because it is a trading practices rule.

Proposed Rule 11.12.11(a) would prohibit ETP Holders and Persons Associated with an ETP Holder from engaging in or facilitating disruptive quoting and trading activity on the Exchange, as described in proposed Rule 11.12.11(b)(1) and (2), including acting in concert with other persons to effect such activity. The Exchange believes that it is necessary to extend the prohibition to situations when persons are acting in concert to avoid a potential loophole where disruptive quoting and trading activity is simply split between several brokers or customers. The Exchange also believes that, with respect to persons acting in concert perpetrating an abusive scheme, it is important that the Exchange have authority to act against the parties perpetrating the abusive scheme, whether it is one person or multiple persons.

Proposed Rule 11.12.11(c) would provide that, unless otherwise indicated, the descriptions of disruptive quoting and trading activity do not require the facts to occur in a specific order in order for the Rule to apply. For instance, with respect to the pattern defined in proposed Rule 11.12.11(b)(1)(A)-(D), it is of no consequence whether a party first enters

Displayed Orders and then Contra-side Orders or vice-versa. However, as proposed, it is required for supply and demand to change following the entry of the Displayed Orders.

The Exchange believes that the proposed descriptions of disruptive quoting and trading activity articulated in the rule are consistent with the activities that have been identified and described in the client access cases described in the NYSE American notice and with the rules of other SROs.[111]

Rule 12 – Arbitration

The Exchange proposes new Rule 12 (Arbitration) to replace rules set forth in Chapter IX relating to arbitration. Proposed Rule 12 is based on NYSE Rule 600A and those portions of NYSE Arca Rule 12 that are based on NYSE Rule 600A. Because any arbitrations involving ETP Holders and/or Associated Persons would be arbitrated pursuant to the FINRA Code of Arbitration Procedures and the Exchange would not separately run an arbitration program, the Exchange proposes to simplify its rules on arbitration and eliminate legacy, non-operative rules.

Proposed Rule 12(a) would set forth an ETP Holder's duty to arbitrate under the FINRA Code of Arbitration Procedure (i) any dispute, claim or controversy by or among ETP Holders and/or Associated Persons; and (ii) any dispute, claim or controversy between a customer or non-member and an ETP Holder and/or Associated Person arising in connection with the business of such ETP Holder and/or in connection with the activities of an Associated Person. Proposed Rule 12(b) would also provide that if any matter comes to the attention of an arbitrator during and in connection with the arbitrator's participation in a proceeding, either from the record of the

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111 See, e.g., BZX Rule 12.15; NASDAQ Rule 2170. See also Securities Exchange Release No. 80804 (May 30, 2017), 82 FR 25887, 25888-25890 (June 5, 2017) (SR-NYSEMKT-2017-25) (Notice of filing discussing matters involving Biremis Corp. and Hold Brothers On-Line Investment Services, Inc.).

proceeding or from material or communications related to the proceeding, that the arbitrator has reason to believe may constitute a violation of the Exchange's rules or the federal securities laws, the arbitrator may refer the matter to the Exchange for disciplinary investigation. Proposed Rule 12(c) would also provide that any ETP Holder or Associated Person who fails to honor an award of arbitrators appointed in accordance with proposed Rule 12 would be subject to disciplinary proceedings under the Rule 10.8000 or 10.9000 Series, as applicable. Proposed Rule 12(d) would provide that the submission of any matter to arbitration would in no way limit or preclude any right, action or determination by the Exchange that it would otherwise be authorized to adopt, administer or enforce.

Because Rule 12 would set forth the Exchange's rules relating to arbitration, the Exchange proposes to delete the rules in Chapter IX in their entirety.

Rule 13 - Liability of Directors and Exchange

Proposed Rule 13 titled "Liability of Directors and Exchange" would establish requirements governing liability of directors and of the Exchange, including the limits on liability for specified circumstances.[112] The rules set forth in proposed Rule 13 are based on the rules set forth in NYSE Arca Rule 14, with non-substantive differences not to reference "OTP Holders" or "OTP Firms," and NYSE American Rule 13E.

Proposed Rule 13.1 (Liability of Directors) is based on NYSE Arca Rule 14.1 without any substantive differences. Proposed Rule 13.2 (Liability of the Exchange) is based on NYSE Arca Rule 14.2 without any substantive differences.

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[112] The Exchange proposes to delete the current heading of Rule 13 ("Cancellation, Suspension, and Reinstatement") established by the Framework Filing as well as "Rule 14." The current heading for Rule 14 ("Liability of Directors and Exchange") would thus become the heading for proposed Rule 13 and the Exchange would not have a Rule 14 in its rulebook.

Proposed Rule 13.3 (Legal Proceedings Against Directors, Officers, Employees, or Agents) would establish requirements relating to legal proceedings against directors, officers, employees, agents, or other officials of the Exchange. The proposed rule is based on NYSE Arca Rule 14.3 and NYSE American Rule 13.3E without any substantive differences.

Proposed Rule 13.4 (Exchange's Costs of Defending Legal Proceedings) would establish the circumstances regarding who is responsible for the Exchange's costs in defending a legal proceeding brought against the Exchange. The proposed rule is based on NYSE Arca Rule 14.4 and NYSE American Rule 13.4E without any substantive differences.

4. Section 11(a) of the Act

Section 11(a)(l) of the Act[113] ("Section 11(a)(1)") prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises investment discretion (collectively, "covered accounts") unless an exception to the prohibition applies. Rule 11a2-2(T) under the Act ("Rule 11a2-2(T)"),[114] known as the "effect versus execute" rule, provides exchange members with an exemption from the Section 11(a)(l) prohibition. Rule 11a2-2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute the transactions on the exchange. To comply with Rule 11a2-2(T)'s conditions, a member: (i) Must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution (although the member may participate in clearing and settling the transaction); (iii) may not be affiliated with the executing

113 15 U.S.C. 78k(a)(1).

114 17 CFR 240.11a2-2(T).

member; and (iv) with respect to an account over which the member or its associated person has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule.

With the proposed re-launch of the Exchange as a fully automated electronic trading model that does not have a trading floor, the Exchange believes that the policy concerns Congress sought to address in Section 11(a)(1) – i.e., the time and place advantage that members on exchange trading floors have over non-members off the floor and the general public – would not be present. Specifically, on the Pillar trading system, buy and sell interest will be matching in a continuous, automated fashion. Liquidity will be derived from quotes as well as orders to buy and orders to sell submitted to the Exchange electronically by ETP Holders from remote locations. The Exchange further believes that ETP Holders entering orders into the Exchange will satisfy the requirements of Rule 11a2-2(T) under the Act, which provides an exception to Section 11(a)'s general prohibition on proprietary trading.

The four conditions imposed by the "effect versus execute" rule are designed to put members and non-members of an exchange on the same footing, to the extent practicable, in light of the purpose of Section 11(a). For the reasons set forth below, the Exchange believes the structure and characteristics of its proposed Pillar trading system do not result in disparate treatment of members and non-members and places them on the "same footing" as intended by Rule 11a2-2(T).

1. **Off-Floor Transmission**. Rule 11a2-2(T) requires orders for a covered account transaction to be transmitted from off the exchange floor. The Commission has considered this and other requirements of the rule in the context of automated trading and electronic order handling facilities operated by various national

securities exchanges in a 1979 Release[115] as well as more applications of Rule 11a2-2(T) in connection with the approval of the registrations of national securities exchanges.[116] In the context of these automated trading systems, the Commission has found that the off-floor transmission requirement is met if an order for a covered account is transmitted from a remote location directly to an exchange's floor by electronic means.[117] Because the Exchange would not have a physical trading floor when it re-launches trading, and like other all electronic exchanges, the Exchange's Pillar trading system would receive orders from ETP Holders electronically through remote terminals or computer-to-computer interfaces, the Exchange therefore believes that its trading system satisfies the off-floor transmission requirement.

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115 See Securities Exchange Act Release No. 15533 (January 29, 1979) (regarding the Amex Post Execution Reporting System, the Amex Switching System, the lntermarket Trading System, the Multiple Dealer Trading Facility of the Cincinnati Stock Exchange, the PCX's Communications and Execution System ("COM EX"), and the Phlx's Automated Communications and Execution System ("PACE")) ("1979 Release").

116 Securities Exchange Act Release Nos. 53128 (January 13, 2006) 71 FR 3550 (January 23, 2006) (File No. 10-13 1) (order approving Nasdaq Exchange registration); 58375 (August 18, 2008) 73 FR 49498 (August 21, 2008) (order approving BATS Exchange registration); 61152 (December 10, 2009) 74 FR 66699 (December 16, 2009) (order approving C2 exchange registration); and 78101 (June 17, 2016), 81 FR 41142, 41164 (June 23, 2016) (order approving Investors Exchange LLC registration).

117 See, e.g., Securities Exchange Act Release Nos. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (order approving the Boston Options Exchange as an options trading facility of the Boston Stock Exchange); 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (order approving Archipelago Exchange ("ArcaEx") as electronic trading facility of the Pacific Exchange ("PCX") ("Arca Ex Order")); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (regarding NYSE's Off-Hours Trading Facility); 15533 (January 29, 1979); and 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978) (regarding the NYSE's Designated Order Turnaround System ("1978 Release")).

2. **Non-Participation in Order Execution**. The "effect versus execute" rule further provides that neither the exchange member nor an associated person of such member participate in the execution of its order. This requirement was originally intended to prevent members from using their own brokers on an exchange floor to influence or guide the execution of their orders.[118] The rule, however, does not preclude members from cancelling or modifying orders, or from modifying instructions for executing orders, after they have been transmitted, provided such cancellations or modifications are transmitted from off an exchange floor.[119] In the 1979 Release discussing both the Pacific Stock Exchange's COMEX system and the Philadelphia Stock Exchange's PACE system, the Commission noted that a member relinquishes any ability to influence or guide the execution of its order at the time the order is transmitted into the systems, and although the execution is automatic, the design of such systems ensures that members do not possess any special or unique trading advantages in handling orders after transmission to the systems.[120] The Exchange's Pillar trading system would at no time following the submission of an order allow an ETP Holder or an associated person of such member to acquire control or influence over the result or timing of an order's execution. The execution of an ETP Holder's order would be determined solely by what quotes and orders are present in the system at the time the member submits the order and the order priority based on Exchange rules. Therefore, the

118 Id. 1978 Release, supra note 117.

119 Id.

120 1979 Release, supra note 115.

Exchange believes the non-participation requirement would be met through the submission and execution of orders in the Exchange's Pillar trading system.

3. **Execution Through an Unaffiliated Member**. Although Rule 11a2-2(T) contemplates having an order executed by an exchange member, unaffiliated with the member initiating the order, the Commission has recognized the requirement is satisfied where automated exchange facilities are used as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange. In the 1979 Release, the Commission noted that while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the systems. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2-2(T). Because the design of the Exchange's Pillar trading system ensures that no ETP Holder has any special or unique trading advantages over nonmembers in the handling of its orders after transmitting its orders to the Exchange, the Exchange believes that its Pillar trading system would satisfy this requirement.

4. **Non-Retention of Compensation for Discretionary Accounts**. Finally, Rule 11a2-2(T) states, in the case of a transaction effected for the account for which the initiating member or its associated person exercises investment discretion, in general, the member or its associated person may not retain compensation for

effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to both Section 11(a) of the Exchange Act and Rule 11a2-2(T). The Exchange will advise its membership through the issuance of a Regulatory Bulletin that those ETP Holders trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the exemption in Rule 11a2-2(T) from the prohibition in Section 11(a) of the Exchange Act.

In conclusion, the Exchange believes that its Pillar trading system would satisfy the four requirements of Rule 11a2-2(T) as well as the general policy objectives of Section 11(a). The Exchange's proposed Pillar trading system would place all users, members and non-members, on the "same footing" with respect to transactions on the Exchange for covered accounts as intended by Rule 11a2-2(T). As such, no Exchange ETP Holder would be able to engage in proprietary trading in a manner inconsistent with Section 11(a).

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[121] in general, and furthers the objectives of Section 6(b)(5),[122] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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.

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121 15 U.S.C. 78f(b).

122 15 U.S.C. 78f(b)(5).

Generally, the Exchange believes that the proposed rules would support the re-launch of the Exchange as a fully automated cash equities trading market with a price-time priority model that is based on the rules of its affiliated exchanges, NYSE Arca and NYSE American. The Exchange is not proposing any new or novel rules. The proposed rule changes relating to trading would therefore remove impediments to and perfect the mechanism of a free and open market and a national market system because they are based on the approved rules of other exchanges.

In addition, the Exchange proposes to renumber its current rules relating to its ETP Holders, including the membership process described in Chapter II of the current rulebook, rules set forth in Chapters III, IV, V, VI, and XII of the current rulebook, and the CAT NMS Plan Compliance Rules, currently set forth in Chapter XIV of the rulebook. The Exchange believes that retaining such rules would remove impediments to and perfect the mechanism of a free and open market and a national market system because ETP Holders would not be required to change their internal procedures to be reinstated as ETP Holders of the Exchange, thus supporting the efficient re-launch of the Exchange. The Exchange further believes that renumbering such rules would remove impediments to and perfect the mechanism of a national market system because using the rule numbering framework that is based on the rules of NYSE Arca and NYSE American would promote transparency in Exchange rules by using consistent rule numbers with the rules of its affiliated exchanges that are also operating on the Pillar trading platform. The Exchange further believes that for proposed Rule 11, retaining sub-numbering for rules that are in the current rulebook would remove impediments to and perfect the mechanism of a free and open market for ETP Holders that have internal procedures that reference current Exchange rules; the proposed rule numbering would minimize the changes required by an ETP Holder to such policies and procedures.

Proposed Changes to the Bylaws

The Exchange believes that amending the Bylaws to change the name of the Appeals Committee to the Committee for Review would remove impediments to and perfect the mechanism of a free and open market by aligning the name used for the Exchange's committee that presides over appeals with the name used by the Exchange's national securities exchanges for their committees that play a similar role, ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Bylaws and, specifically, the role of the Committee for Review.

In addition, the Exchange believes that the proposed changes to the Bylaws to change the name of the Appeals Committee to the Committee for Review would contribute to the orderly operation of the Exchange by aligning the name used for the Exchange's committee that presides over appeals with the name used by the Exchange's national securities exchanges for their committees that play a similar role, and therefore would be consistent with Section 6(b)(1) of the Act.[123] The change to the Bylaws would be non-substantive, as the makeup and function of the Appeals Committee would not change.

Proposed Rules Based on the Rules of the Exchange's Affiliates

Regulation of the Exchange (Rule 0) and Definitions (Rule 1)

The Exchange believes that proposed Rule 0 would 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 because it would specify the role of FINRA, pursuant to a Regulatory Services Agreement, to perform certain regulatory functions of the Exchange on behalf of the Exchange.

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123 15 U.S.C. 78f(b)(1).

The Exchange further believes that proposed Rule 1 would 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 because the proposed definitions are terms that would be used in the additional rules proposed by the Exchange. Proposed Rule 1 would therefore promote transparency in Exchange rules by providing for definitional terms that would be used throughout the rulebook.

Administration of the Exchange (Rule 3)

The Exchange believes that proposed Rule 3 would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would establish rules relating to the organization and administration of the Exchange that are based on the approved rules of NYSE Arca, including rules relating to liability for non-payment of assessments, dues, or other charges (proposed Rule 3.8), Exchange relationships with ETP Holders (proposed Rule 3.9), requirements to notify the Exchange of expulsion or suspension (proposed Rule 3.10), and requirements for fingerprint-based background checks of Exchange employees (proposed Rule 3.11).

Trading Securities on an Unlisted Trading Privileges Basis (Rules 5 and 8)

The Exchange believes that proposed Rules 5 and 8 would 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 trading of securities, including UTP Exchange Traded Products, on the Exchange pursuant to UTP, 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 trading environment for investors and, generally, encourage greater competition between markets.

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 will lead ultimately to the trading pursuant to UTP of the proposed products on the Exchange, just as they are currently traded on other exchanges. The proposed changes do nothing more than match Exchange rules with what is currently available on other exchanges, and more specifically, NYSE American Rules 5E and 8E, NYSE Rules 5P and 8P, and NYSE Arca Rules 5 and 8. The Exchange believes that by conforming its rules and allowing trading opportunities on the Exchange that are already allowed by rule on another market, the proposal would offer another venue for trading Exchange Traded Products and thereby promote broader competition among exchanges. The Exchange believes that individuals and entities permitted to make markets on the Exchange in the proposed new products 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 proposed new products.

The proposed change is not designed to address any competitive issue, but rather to adopt new rules that are word-for-word identical to the rules of NYSE American, NYSE, and NYSE Arca (other than with respect to certain non-substantive and technical amendments described above), to support the Exchange's new Pillar trading platform. The Exchange believes that the proposed rule change would promote consistent use of terminology to support the Pillar trading platform on both the Exchange and its affiliates, NYSE American, NYSE, and NYSE Arca, thus making the Exchange's rules easier to navigate.

The Exchange believes the proposed rule change also supports the principals of Section 11A(a)(1)[124] of the Act in that it seeks to ensure the economically efficient execution of securities transactions and fair competition among brokers and dealers and among exchange markets. The proposed rule change also supports the principles of Section 12(f) of the Act, which govern the trading of securities pursuant to a grant of unlisted trading privileges consistent with the maintenance of fair and orderly markets, the protection of investors and the public interest, and the impact of extending the existing markets for such securities.

The Exchange believes that the proposed rule change is consistent with these principles. By providing for the trading of securities on the Exchange on a UTP basis, the Exchange believes its proposal will lead to the addition of liquidity to the broader market for these securities 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 securities traded pursuant to UTP.

The Exchange further believes that enhancing liquidity by trading securities on a UTP basis would help raise investors' confidence in the fairness of the market, generally, and their transactions in particular. As such, the general UTP trading rule 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.

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[124] 15 U.S.C 78k-1(a)(1).

Order Audit Trail Rules (Proposed Rule 6)

The Exchange believes that moving the CAT NMS Plan Compliance Rules, currently set forth in Chapter XIV, to proposed Rule 6.6800 would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would consolidate all of the Exchange's order audit trail requirements in a single Rule, without any substantive differences to the Compliance Rules, and because it would follow the same rule-numbering convention as its affiliated exchanges and FINRA.

The Exchange believes that proposed Rule 6.6900 relating to Consolidated Audit Trail – Fee Dispute Resolution would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would harmonize the Exchange's rules with the approved rules of other exchanges relating to fee dispute resolution under the CAT NMS Plan.[125] The proposed CAT Fee Dispute Resolution Rule would therefore implement, interpret or clarify Section 11.5 of the CAT NMS Plan, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the Plan.

Finally, the Exchange believes that the proposed Rule 6.7400 Series, relating to Order Audit Trail System, would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed rule series is based on the approved rules of NYSE Arca, which are based on FINRA's OATS rules. The Exchange further believes that the proposed OATS rules would promote just and equitable principles of trade as such rules would further promote cross-market surveillance and enhance FINRA's ability to conduct surveillance and investigations for the Exchange under a Regulatory Services Agreement. The Exchange does not believe that adding the OATS rules to the Exchange would impose a burden

125 See Fee Dispute Approval Order, supra note 88.

on Exchange ETP Holders because with the exception of one Exchange ETP Holder, all former Exchange ETP Holders were members of either FINRA, NYSE Arca, or Nasdaq, and thus are already subject to OATS requirements under the rules of those SROs. The one ETP Holder that is not currently a member of FINRA, one of the Exchange's affiliates, or Nasdaq would not be subject to ongoing reporting requirements under the proposed OATS rules, and therefore it would not be onerous for such ETP Holder to comply if OATS information were requested in the course of a regulatory inquiry.

Equities Trading Rules (proposed Rule 7)

The Exchange believes that proposed Rule 7 would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would establish rules relating to trading on the Exchange, including post-trade requirements, that would support the re-launch of Exchange trading as a fully automated trading market with a price-time priority trading model. The proposed rules are based on the rules of NYSE Arca and NYSE American, as applicable, and include rules governing orders and modifiers, ranking and display, execution and routing, trading sessions, and market makers. The Exchange believes that because it would not be a listing venue, it would be consistent with the protection of investors and the public interest not to include rules relating to auctions or lead or designated market makers. Other than substantive differences to the proposed rules relating to the difference that the Exchange would not operate auctions, the Exchange is not proposing any novel rules in proposed Rule 7.

Disciplinary Rules (proposed Rule 10)

The Exchange believes that the proposed Rule 10 Series would provide greater harmonization among SROs resulting in less burdensome and more efficient regulatory

compliance for common members of the Exchange, the Exchange's affiliates, and FINRA. As previously noted, the proposed rule text is substantially the same as NYSE American's rule text. The proposed rule change would enhance the Exchange's ability to have a direct and meaningful impact on the end-to-end quality of its regulatory program once the Exchange relaunches, from detection and investigation of potential violations through the efficient initiation and completion of disciplinary measures where appropriate. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange further believes that the proposed processes for settling disciplinary matters both before and after the issuance of a complaint are fair and reasonable and provides adequate procedural protections to all parties in addition to promoting efficiency.

The Exchange believes that adopting its affiliates' appellate procedures, which provide for one level of review rather than two levels of review, would be fair and efficient and create consistency with its affiliates' practices. The proposed rule change would offer the members of Board, other than the CEO, the opportunity to call a case for review. This will provide the Board with authority to exercise appropriate oversight over disciplinary action taken by the Exchange and FINRA on the Exchange's behalf.

The Exchange notes that adopting the list of minor rule violations and associated fine levels based on the rules of its affiliate would promote fairness and consistency in the marketplace by harmonizing minor rule plan fines across affiliated exchanges for the same conduct. The Exchange further believes that adoption of its affiliates' minor rule violations is

consistent with Section 6(b)(6) of the Act,[126] which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

Arbitration (proposed Rule 12)

The Exchange believes that proposed Rule 12 relating to arbitration would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would update the Exchange's rules governing arbitration to reflect that any such arbitrations would be processed by FINRA pursuant to the FINRA Code of Arbitration Procedures. The proposed rule is not novel as it is based on NYSE Rule 600A and NYSE Arca Rule 12. In addition, the proposed rule change would delete obsolete arbitration procedures that are not supported by the Exchange. The Exchange believes the proposed rule change fosters uniformity and consistency in arbitration proceedings and, as a result, would enhance the administration and operation of the arbitration process, thereby protecting investors and the public interest. The proposed rule change would therefore promote consistency among the Exchange and its affiliates and make its rules easier to navigate for the public, the Commission, and members.

Liability of Directors and Exchange (proposed Rule 13)

The Exchange believes that proposed Rule 13 would remove impediments to and perfect the mechanism of a free and open market and a national market system by harmonizing the Exchange's rules governing liability of directors, liability of exchange, legal proceedings against

126 15 U.S.C. 78f(b)(6).

Exchange directors, officers, employees, or agents, and Exchange's costs of defending legal proceedings with the approved rules of its affiliated exchanges NYSE Arca and NYSE American. The Exchange believes that the proposed rules would further promote just and equitable principles of trade by providing for consistent methodology relating to liability for trading on affiliated exchanges that would be using the same trading platform. The proposed rule change would therefore promote consistency among the Exchange and its affiliates and make its rules easier to navigate for the public, the Commission, and ETP Holders.

Proposed Renumbering of Rules in Chapters II, III, IV, V, VI, and XII

The Exchange believes that renumbering rules currently set forth in Chapters II to Rule 2 and rules currently set forth in Chapters III, IV, V, VI, and XII to Rule 11 would remove impediments to and perfect the mechanism of a free and open market because the proposed rule set would maintain existing rules relating to ETP Holders. The Exchange believes that relocating existing rules set forth in Chapters II, III, IV, V, VI, and XII to proposed Rules 2 and 11 would remove impediments to and perfect the mechanism of a free and open market and a national market system because using the rule numbering framework that is based on the rules of NYSE Arca would promote transparency in Exchange rules by using consistent rule numbers with the equities market of NYSE Arca, which is the first market that migrated to the Pillar trading platform. In addition, the Exchange believes that the proposed sub-numbers for rules set forth in Rule 11, which are identical to the current rule numbers for such rules, would remove impediments to and perfect the mechanism of a free and open market and a national market system by providing current ETP Holders, who are familiar with the current rulebook, with rule numbers that are consistent with the current rulebook for rules that are not changing.

The Exchange further believes that updating Exchange rules as follows would remove impediments to and perfect the mechanism of a free and open market and a national market system by harmonizing the Exchange's rules with those of other SROs:

- The Exchange believes that the proposed amendment to Rule 2.5 to update proposed Commentary .01 to add the date February 1, 2017 would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would facilitate the efficient reinstatement of Exchange ETP Holders that are in good standing pursuant to the Exchange's existing rules, which would support the re-launch of trading on the Exchange.
- The Exchange believes that proposed Rule 2.13 (Exchange Backup Systems and Mandatory Testing) would remove impediments to and perfect the mechanism of a free and open market because it would maintain consistency across all exchanges operated by NYSE Group regarding mandatory participation in the testing of backup systems. The proposed rule is based on NYSE Arca Rule 2.27 and is not novel.
- The Exchange believes that proposed Rule 2.18 (Activity Assessment Fee) furthers the objectives of Section 6(b)(4) of the Act,[127] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers. Specifically, proposed Rule 2.18 does not establish a new fee. Rather, the proposed rule is based on existing provisions of current 16.1 relating to

127 15 U.S.C. 78f(b)(4).

"Regulatory Transaction Fees" without any substantive differences. The Exchange proposes to move the rule text to Rule 2.18 to use rule numbering for Pillar that is consistent with the Framework Filing, with non-substantive differences to use Pillar terminology, and not move obsolete rule text.

- The Exchange believes that proposed Rule 11.5.5 (Prevention of the Misuse of Material, Nonpublic Information), which is based on NYSE Arca Rule 11.3 and NYSE American Rule 6.3E and would replace current Rule 5.5, would remove impediments to and perfect the mechanism of a free and open market and a national market system by providing for a principles-based approach to prevent the misuse of material non-public information. The proposed rule change would therefore harmonize the Exchange's rules with those of its affiliated exchanges.
- The Exchange believes that proposed Rule 11.12.6 (Prohibition of Trading Ahead of Customer Orders), which is based on NYSE Arca Rule 9.5320, NYSE American 5320- Equities, and NYSE Rule 5320, and would replace current Rule 12.6 would remove impediments to and perfect the mechanism of a free and open market and a national market system and is designed to prevent fraudulent and manipulative acts and practices because it would promote cross-market surveillance and enhance FINRA's ability to conduct surveillance and investigations on behalf of the Exchange under a regulatory services agreement.
- The Exchange believes that proposed Rule 11.12.11 (Disruptive Quoting and Trading Activity Prohibited), which is modeled on NYSE American Rule 5220 – Equities, NYSE Rule 5220, and NYSE Arca Rule 11.21, which in turn are modeled on Commentary .03 to FINRA Rule 5210, would remove impediments

to and perfect the mechanism of a free and open market and a national market system by harmonizing the Exchange's rules with those of other SROs, including its affiliated exchanges. In addition, the Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest by providing the Exchange with authority to prohibit specified disruptive quoting and trading activity on the Exchange. More specifically, the Exchange believes that the proposed rule is consistent with the public interest and the protection of investors and otherwise furthers the purposes of the Act because the proposal strengthens the Exchange's ability to carry out its oversight and enforcement responsibilities as an SRO in cases where awaiting the conclusion of a full disciplinary proceeding is unsuitable in view of the potential harm to other member organization and their customers. The Exchange notes that if this type of conduct is allowed to continue on the Exchange, the Exchange's reputation could be harmed because it may appear to the public that the Exchange is not acting to address the behavior. The proposed expedited process would enable the Exchange to address the behavior with greater speed. For the same reasons, the Exchange believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,[128] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of the Commission and Exchange rules.

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128 15 U.S.C. 78f(b)(5).

Section 11(a) of the Act

For reasons described above, the Exchange believes that the proposal for the Exchange to operate on a fully automated trading market without a Floor is consistent with Section 11(a) of the Act and Rule 11a2-2(T) thereunder.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather to provide for rules to support the re-launch of trading on the Exchange on the Pillar trading platform and to renumber current rules relating to ETP Holders consistent with the Framework Filing, but also maintaining current rule numbers as part of a sub-numbering scheme for rules that are not changing. The Exchange operates in a highly competitive environment in which its unaffiliated exchanges competitors operate multiple affiliated exchanges that operate under common rules. By proposing rules based on the rules of its affiliated exchanges, the Exchange believes that it will be able to compete on a more level playing field with its exchange competitors that similarly trade NMS Stocks on fully automated trading models. In addition, by basing its rules on those of its affiliated exchanges, the Exchange will provide its ETP Holders with consistency across affiliated exchanges, thereby enabling the Exchange to compete with unaffiliated exchange competitors that similarly operate multiple exchanges on the same trading platforms.

In addition, the Exchange does not believe that the proposed rule change will impose any burden on competition on its ETP Holders that is not necessary or appropriate in furtherance of the purposes of the Act because the Exchange proposes to retain rules governing ETP Holder conduct and therefore such ETP Holders would not need to update internal procedures in

connection with the re-launch of the Exchange. To the extent the Exchange has proposed non-trading rules based on those of its affiliates, e.g., OATS rules, disciplinary rules, and certain conduct rules, the Exchange believes that because all but one of its former ETP Holders are already members of FINRA, an affiliated exchange, or Nasdaq, Exchange ETP Holders are already familiar with such rules in connection with their membership on those SROs. Moreover, these proposed rules would provide for greater harmonization among SROs of the rules for investigations and disciplinary matters, resulting in less burdensome and more efficient regulatory compliance for common members and facilitating the Exchange's performance of its regulatory functions. The Exchange further believes that the proposed rule change would promote consistency and transparency on both the Exchange and its affiliated exchanges, thus making the Exchange's rules easier to navigate.

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 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 self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSENAT-2018-02 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-NYSENAT-2018-02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the

principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSENAT-2018-02 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[129]

Eduardo A. Aleman,

Assistant Secretary.

[129] 17 CFR 200.30-3(a)(12).

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