

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89368; File No. SR–NYSE–2020–61]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delete Supplementary Material .20 to Rule 76

July 21, 2020.

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 July 20, 2020, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the Commission) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to delete Supplementary Material .20 to Rule 76 and lift the temporary suspension on “crossing” orders pursuant to Rule 76. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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

1. Purpose

The Exchange proposes to delete Supplementary Material .20 to Rule 76

and lift the temporary suspension on “crossing” orders pursuant to Rule 76.

Background

To slow the spread of COVID–19 through social-distancing measures, on March 18, 2020, the CEO of the Exchange made a determination under Rule 7.1(c)(3) that, beginning March 23, 2020, the Trading Floor facilities located at 11 Wall Street in New York City would close and the Exchange would move, on a temporary basis, to fully electronic trading.⁴ On May 14, 2020, the CEO of the Exchange made a determination under Rule 7.1(c)(3) to reopen the Trading Floor on a limited basis on May 26, 2020 to a subset of Floor brokers, subject to safety measures designed to prevent the spread of COVID–19.⁵ On June 15, 2020, the CEO of the Exchange made a determination under Rule 7.1(c)(3) to begin the second phase of the Trading Floor reopening by allowing DMMs to return on June 17, 2020, subject to safety measures designed to prevent the spread of COVID–19.⁶

The Exchange has modified its rules to add Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C; Supplementary Material .20 to Rule 76; and rule relief in Rule 36.30⁷ that are in effect until the earlier of a full reopening of the Trading

⁴ See Press Release, dated March 18, 2020, available here: <https://ir.theice.com/press/press-releases/all-categories/2020/03-18-2020-204202110>.

⁵ See Securities Exchange Act Release No. 88933 (May 22, 2020), 85 FR 32059 (May 28, 2020) (SR–NYSE–2020–47) (Notice of filing and immediate effectiveness of proposed rule change).

⁶ See Securities Exchange Act Release No. 89086 (June 17, 2020) (SR–NYSE–2020–52) (Notice of filing and immediate effectiveness of proposed rule change).

⁷ See Securities Exchange Act Release Nos. 88413 (March 18, 2020), 85 FR 16713 (March 24, 2020) (SR–NYSE–2020–19) (amending Rule 7.35C to add Commentary .01); 88444 (March 20, 2020), 85 FR 17141 (March 26, 2020) (SR–NYSE–2020–22) (amending Rules 7.35A to add Commentary .01, 7.35B to add Commentary .01, and 7.35C to add Commentary .02); 88488 (March 26, 2020), 85 FR 18286 (April 1, 2020) (SR–NYSE–2020–23) (amending Rule 7.35A to add Commentary .02); 88546 (April 2, 2020), 85 FR 19782 (April 8, 2020) (SR–NYSE–2020–28) (amending Rule 7.35A to add Commentary .03); 88562 (April 3, 2020), 85 FR 20002 (April 9, 2020) (SR–NYSE–2020–29) (amending Rule 7.35C to add Commentary .03); 88705 (April 21, 2020), 85 FR 23413 (April 27, 2020) (SR–NYSE–2020–35) (amending Rule 7.35A to add Commentary .04); 88725 (April 22, 2020), 85 FR 23583 (April 28, 2020) (SR–NYSE–2020–37) (amending Rule 7.35 to add Commentary .01); 88950 (May 26, 2020), 85 FR 33252 (June 1, 2020) (SR–NYSE–2020–48) (amending Rule 7.35A to add Commentary .05); 89059 (June 12, 2020), 85 FR 36911 (June 18, 2020) (SR–NYSE–2020–50) (amending Rule 7.35C to add Commentary .04); and 89086 (June 17, 2020) (SR–NYSE–2020–52) (amending Rules 7.35A to add Commentary .06, 7.35B to add Commentary .03, 76 to add Supplementary Material 20, and Supplementary Material .30 to Rule 36).

Floor facilities to DMMs or after the Exchange closes on July 31, 2020.⁸

Proposed Rule Change

The Exchange has determined that, during this phase of the partial reopening of the Trading Floor when both DMMs and Floor brokers have returned to the Trading Floor with reduced staff, Floor brokers can resume “crossing” transactions pursuant to Rule 76, including the Cross Function specified in Supplementary Material .10 to Rule 76, in a manner consistent with the safety measures designed to prevent the spread of COVID–19.

Crossing transactions, which require a verbal representation of the proposed crossing transaction, involve face-to-face interactions on the Trading Floor. Because such proposed transactions do not happen at set times during the trading day, they generally do not result in large numbers of individuals congregating on the Trading Floor. The Exchange has discussed the resumption of crossing orders with member organizations that operate DMM units and Floor broker firms that have returned to the Trading Floor. Based on these discussions, the Exchange believes that crossing transactions can be resumed in a manner consistent with both the safety measures required on the Trading Floor, including the use of cloth face masks or coverings and maintaining at least six-foot physical distancing from other individuals,⁹ and the Rule 76 requirement that such proposed transactions be clearly announced to the trading crowd.

To effect this change, the Exchange proposes to lift the temporary suspension of Rule 76 by deleting Supplementary Material .20 to Rule 76.

The Exchange would be able to implement the proposed rule change immediately upon effectiveness of this proposed rule change.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the

⁸ See Securities Exchange Act Release No. 89199 (June 30, 2020), 85 FR 40718 (July 7, 2020) (SR–NYSE–2020–56) (Notice of filing and immediate effectiveness of proposed rule change to extend the temporary period for Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C, Supplementary Material .20 to Rule 76, and temporary rule relief to Rules 36.30 to end on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on July 31, 2020).

⁹ See NYSE IM–20–03, “Standards of Conduct for the Safety and Welfare of Persons on the Trading Floor Relating to COVID–19,” dated May 14, 2020, available here: [https://www.nyse.com/publicdocs/nyse/markets/nyse/rule-interpretations/2020/NYSE%20IM%20\(5-14-20\)%20-%20Final%20-%20Republished.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse/rule-interpretations/2020/NYSE%20IM%20(5-14-20)%20-%20Final%20-%20Republished.pdf).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ in particular, in that 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, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

To reduce the spread of COVID-19, the CEO of the Exchange made a determination under Rule 7.1(c)(3) that beginning March 23, 2020, the Trading Floor facilities located at 11 Wall Street in New York City would close and the Exchange would move, on a temporary basis, to fully electronic trading. On May 14, 2020, the CEO of the Exchange made a determination under Rule 7.1(c)(3) that, beginning May 26, 2020, the Trading Floor would be partially reopened to allow a subset of Floor brokers to return to the Trading Floor. And on June 15, 2020, the CEO of the Exchange made a determination under Rule 7.1(c)(3) that, beginning June 17, 2020, the Trading Floor would be partially reopened to allow a subset of DMs to return to the Trading Floor.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would permit the resumption of crossing transactions pursuant to Rule 76, and therefore restore functionality to Floor brokers. The Exchange believes that crossing transactions can be resumed on the Trading Floor in a manner consistent with both the requirements of Rule 76 and the safety measures required on the Trading Floor, including the use of cloth face masks or coverings and maintaining at least six-foot physical distancing from other individuals. The Exchange therefore proposes to lift this temporary suspension by deleting Supplementary Material .20 to Rule 76.

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. This proposed rule change is not designed to address any competitive issues but rather to restore functionality to Floor brokers by lifting the temporary

suspension on crossing transactions pursuant to Rule 76.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³ Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁴ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁵

A proposed rule change filed under Rule 19b-4(f)(6)¹⁶ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁷ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may take effect immediately. The Exchange believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it will lift a temporary rule suspension and restore functionality to Floor brokers without any further delay. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹⁸

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁵ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

¹⁸ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁹ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSE-2020-61 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to File Number SR-NYSE-2020-61. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹⁹ 15 U.S.C. 78s(b)(2)(B).

office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2020–61 and should be submitted on or before August 17, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89366; File No. SR–NYSEArca–2020–61]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 1.1 to Include Active Proxy Portfolio Shares, Tracking Fund Shares, Proxy Portfolio Shares, and Index Fund Shares

July 21, 2020.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 (“Act”) ² and Rule 19b–4 thereunder, ³ notice is hereby given that, on July 10, 2020, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Rule 1.1 to include Active Proxy Portfolio Shares, Tracking Fund Shares, Proxy Portfolio Shares, and Index Fund Shares in the definition of “UTP Derivative Securities Product.” The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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

1. Purpose

The Exchange proposes to amend Rule 1.1(k), which sets forth the meanings of “Derivative Securities Product” and “UTP Derivative Securities Product” as those terms are used in Exchange rules.

Specifically, the Exchange proposes to amend the definition of “UTP Derivative Securities Product” to include Active Proxy Portfolio Shares listed pursuant to NYSE Arca Rule 8.601–E, Tracking Fund Shares listed pursuant to Cboe BZX Exchange, Inc. (“BZX”) Rule 14.11(m), and Proxy Portfolio Shares which may in the future be listed pursuant to Nasdaq Stock Market LLC (“Nasdaq”) Rule 5750 ⁴ as additional types of Derivative Securities Products that may trade on the Exchange pursuant to unlisted trading privileges (“UTP”).

To effect this change, the Exchange proposes to add a bullet point listing “Active Proxy Portfolio Shares listed pursuant to NYSE Arca, Inc. Rule 8.601–E, Tracking Fund Shares listed pursuant to Cboe BZX Exchange, Inc.

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

Rule 14.11(m), and Proxy Portfolio Shares listed pursuant to Nasdaq Stock Market LLC Rule 5750” in Rule 1.1(k) to include them in the enumerated list of Derivative Securities Products that may trade on the Exchange on a UTP basis. The Exchange also proposes non-substantive changes accommodate the addition of this bullet point as the final item in the bulleted list in Rule 1.1(k).

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

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, ⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act, ⁶ in particular, because it is designed to remove impediments to and perfect the mechanism of a free and open market, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market, promote just and equitable principles of trade, and, in general, to protect investors and the public interest because it modifies Rule 1.1(k) to state the complete list of Derivative Securities Products that may trade on a UTP basis on the Exchange, providing specificity, clarity, and transparency in the Exchange’s rules. Moreover, the proposed rule change will facilitate the trading of additional types of Derivative Securities Products on the Exchange pursuant to UTP, thereby enhancing competition among market participants for the benefit of investors and the marketplace.

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

The Exchange does not believe that the proposed rule change will impose

²⁰ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) & (5).