SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87353; File No. SR–NYSE–2019–56]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Current Pilot Program Related to Rule 7.10

October 18, 2019.

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 October 16, 2019, New York Stock Exchange LLC (''NYSE'' 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 extend the current pilot program related to Rule 7.10 (Clearly Erroneous Executions) to the close of business on April 20, 2020. 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 purpose of the proposed rule change is to extend the current pilot program related to Rule 7.10 (Clearly Erroneous Executions) to the close of business on April 20, 2020. The pilot program is currently due to expire on October 18, 2019.

On September 10, 2010, the Commission approved, on a pilot basis, changes to Rule 128 (Clearly Erroneous Executions) that, among other things: (i) Provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.[4] In 2013, the Exchange adopted a provision to Rule 128 designed to address the operation of the Plan.[5] Finally, in 2014, the Exchange adopted two additional provisions to Rule 128 providing that: (i) A series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market.[6] Rule 128 is no longer applicable to any securities that trade on the Exchange and has been replaced with Rule 7.10, which is substantively identical to Rule 128.[7]

These changes were originally scheduled to operate for a pilot period to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down Plan'' or ''LULD Plan''),[8] including any extensions to the pilot period for the LULD Plan.[9] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[10] In light of that change, the Exchange amended Rules 7.10 and 128 to untie the pilot program's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[11]

The Exchange now proposes to amend Rule 7.10 to extend the pilot program's effectiveness for a further six months until the close of business on April 20, 2020. If the pilot period is not either extended, replaced or approved as permanent, the prior versions of paragraphs (c), (e)(2), (f), and (g) shall be in effect, and the provisions of paragraphs (i) through (k) shall be null and void.[12] In such an event, the remaining sections of Rules 7.10 would continue to apply to all transactions executed on the Exchange. The Exchange understands that the other national securities exchanges and Financial Industry Regulatory Authority (''FINRA'') will also file similar proposals to extend their respective clearly erroneous execution pilot programs, the substance of which are identical to Rule 7.10.

The Exchange does not propose any additional changes to Rule 7.10. Extending the effectiveness of Rule 7.10 for an additional six months will provide the Exchange and other self-regulatory organizations additional time to consider whether further amendments to the clearly erroneous execution rules are appropriate.

2. Statutory Basis

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

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

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR–NYSE–2010–47).

[5] *See* Securities Exchange Act Release No. 68804 (Feb. 1, 2013), 78 FR 8677 (Feb. 6, 2013) (SR–NYSE–2013–11).

[6] *See* Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (SR–NYSE–2014–22).

[7] *See* Securities Exchange Act Release Nos. 82945 (March 26, 2019), 83 FR 13553, 13565 (March 29, 2019) (SR–NYSE–2017–36) (Approval Order) and 85962 (May 29, 2019), 84 FR 26188, 26189 n.13 (June 5, 2019) (SR–NYSE–2019–05) (Approval Order).

[8] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[9] *See* Securities Exchange Act Release No. 71821 (March 27, 2014), 79 FR 18592 (April 2, 2014) (SR–NYSE–2014–17).

[10] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (approving Eighteenth Amendment to LULD Plan).

[11] *See* Securities Exchange Act Release No. 85523 (April 5, 2019), 84 FR 14706 (April 11, 2019) (SR–NYSE–2019–17).

[12] *See* supra notes 4–6. The prior versions of paragraphs (c), (e)(2), (f), and (g) generally provided greater discretion to the Exchange with respect to breaking erroneous trades.

Act,[13] in general, and Section 6(b)(5) of the Act,[14] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. The Exchange believes that extending the clearly erroneous execution pilot under Rule 7.10 for an additional six months would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the amended clearly erroneous executions rule should continue to be in effect on a pilot basis while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate.

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. The proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous execution rules across the U.S. equities markets while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals to extend their respective clearly erroneous execution pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

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

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 Act[15] and subparagraph (f)(6) of Rule 19b–4 thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6)[17] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[18] permits the Commission to 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 proposed rule change may become effective and operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the current clearly erroneous execution pilot program to continue uninterrupted, without any changes, while the Exchange and the other national securities exchanges consider a permanent proposal for clearly erroneous execution reviews. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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–2019–56 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–2019–56. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 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 satisfied this requirement.

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2019–56 and should be submitted on or before November 14, 2019.

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

Eduardo A. Aleman,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87110]

Order Granting a Conditional Exemption From Exchange Act Section 11(D)(1) and Exchange Act Rules 10B–10, 15C1–5, 15C1–6, and 14E–5 for Certain Exchange Traded Funds

AGENCY: Securities and Exchange Commission.

ACTION: Exemptive order.

SUMMARY: The Securities and Exchange Commission (''Commission'' or ''SEC'') is issuing an order granting an exemption from compliance with certain provisions of the Securities Exchange Act of 1934 (''Exchange Act'') and the rules thereunder to broker-dealers and certain other persons engaging in certain transactions in securities of exchange-traded funds (''ETFs'') relying on rule 6c–11 under the Investment Company Act of 1940 (''Investment Company Act'').

DATES: This exemptive order is effective December 23, 2019.

FOR FURTHER INFORMATION CONTACT: Darren Vieira, Special Counsel, Brandon Hill, Special Counsel, or Joanne Rutkowski, Assistant Chief Counsel, at (202) 551–5550; in the Division of Trading and Markets; Daniel Duchovny, Special Counsel, Office of Mergers and Acquisitions, at (202) 551–3440, in the Division of Corporation Finance; Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission adopted rule 6c–11 under the Investment Company Act, which permits ETFs that satisfy certain conditions to operate without the expense and delay of obtaining an exemptive order from the Commission under the Investment Company Act.[1] Rule 6c–11 is designed to create a consistent, transparent, and efficient regulatory framework for ETFs and to facilitate greater competition and innovation among ETFs.

While the relief under rule 6c–11 is limited to exemptions under the Investment Company Act,[2] commenters on proposed rule 6c–11 also recommended that the Commission harmonize with rule 6c–11 certain Exchange Act relief that ETFs currently rely on in order to operate, including relief from section 11(d)(l) of the Exchange Act and Exchange Act rules 10b–10, 15c1–5, 15c1–6, and 14e–5.[3] Commenters expressed concern that the conditions that have been associated with Exchange Act relief are duplicative or, in some cases, inconsistent with other requirements applicable to ETFs.[4]

The Commission agrees that such relief could further reduce regulatory complexity and administrative delay, and eliminate potential inconsistencies between rule 6c–11 and the related Exchange Act relief that ETFs have obtained to operate.[5] The Commission has considered the issues raised and believes that it is appropriate to grant relief from section 11(d)(1) and rules 10b–10, 15c1–5, 15c1–6, and 14e–5 because broker-dealers and certain other persons that engage in these transactions and satisfy the conditions below, as applicable, would not raise the issues or concerns that underlie those provisions. Accordingly, the Commission finds that it is necessary and appropriate in the public interest and consistent with the protection of investors to grant an exemption from section 11(d)(1) of the Exchange Act and Exchange Act rules 10b–10, 15c1–5, 15c1–6, and 14e–5,to broker-dealers and certain other persons, as applicable, that engage in certain transactions with ETFs relying on rule 6c–11, subject to the conditions below.

II. Background

An ETF issues shares that can be bought or sold throughout the day in the secondary market at a market-determined price. Like other investment companies, an ETF pools the assets of multiple investors and invests those assets according to its investment objective and principal investment strategies. Each share of an ETF represents an undivided interest in the underlying assets of the ETF. Similar to mutual funds, ETFs continuously offer their shares for sale.

Unlike mutual funds, however, ETFs do not sell or redeem individual shares. Instead, ''authorized participants'' that have contractual arrangements with the ETF, or one of its service providers, purchase and redeem ETF shares directly from the ETF in blocks called ''creation units.'' [6] An authorized participant may act as a principal for its own account when purchasing or redeeming creation units from the ETF. Authorized participants also may act as agent for others, such as market makers, proprietary trading firms, hedge funds or other institutional investors, and receive fees for processing creation units

[20] 17 CFR 200.30–3(a)(12).

[1] Exchange Traded Funds, Investment Company Act Release No. 33646 (Sep. 25, 2019) (''Rule 6c–11 Adopting Release'').

[2] In the Rule 6c–11 Adopting Release, the Commission also provided an interpretation of certain other Exchange Act rules containing exemptions for transactions in redeemable securities issued by open-end companies and unit investment trusts as follows:

After considering comments, we believe that it is appropriate to make all ETFs, including those that do not rely on rule 6c–11, eligible for the redeemable securities exceptions in rules 101(c)(4) and 102(d)(4) of Regulation M and rule 10b–17(c) under the Exchange Act in connection with secondary market transactions in ETF shares and the creation or redemption of creation units and the exemption in rule 11d1–2 under the Exchange Act for a registered open-end investment company or unit investment trust.

[3] *See* Comment Letter of Blackrock, Inc. at 21 (Sept. 26, 2018) (''BlackRock Comment Letter''); Comment Letter of the Investment Company Institute at 32 (Sept. 21, 2018) (''ICI Comment Letter''); Comment Letter of Fidelity Management & Research Company at 12 (Sept. 28, 2018); Comment Letter of Dechert LLP at 8 (Sept. 28, 2018) (''Dechert Comment Letter''); Comment Letter of the Securities Industry and Financial Markets Association—Asset Management Group at 22 and 23 (Sept. 28, 2018) (''SIFMA AMG Comment Letter''); Comment Letter of Vanguard at 2 (Sept. 28, 2018); Comment Letter of WisdomTree Asset Management at 2 (Oct. 1, 2018); Comment Letter of the American Bar Association at 4 (Oct. 11, 2018); Comment Letter of John Hancock Investments at 5 (Oct. 1, 2018); and Comment Letter of Flow Traders US LLP at 2 (Oct. 1, 2018).

[4] *See, e.g.,* BlackRock Comment Letter. *See also, e.g.,* ICI Comment Letter (''Currently, ETFs often must satisfy multiple and sometimes conflicting requirements from different divisions within the SEC.''). Commenters also expressed concerns about delays in obtaining such additional relief. *See, e.g.,* SIFMA AMG Comment Letter I.

[5] Although the exemption granted by this order applies only to transactions in securities of ETFs that meet certain requirements and conditions, the beneficiaries of the relief, other than the relief under Exchange Act rule 14e–5, are broker-dealers that engage in transactions subject to the relevant provisions of the Exchange Act and rules thereunder. The beneficiaries of the relief under Exchange Act rule 14e–5 are ETFs, the legal entity of which the ETF is a series, and authorized participants, as described below.

[6] Rule 6c–11(a)(1) defines ''authorized participant'' as a member or participant of a clearing agency registered with the Commission, which has a written agreement with the ETF or one of its service providers that allows the authorized participant to place orders for the purchase and redemption of creation units. *See* Rule 6c–11 Adopting Release.