

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88439; File No. SR-LTSE-2020-06)

March 20, 2020

Self-Regulatory Organizations; Long-Term Stock Exchange; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Trading of Exchange Traded Products on an Unlisted Trading Privileges Basis

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 March 11, 2020, Long-Term Stock Exchange (“LTSE” or the “Exchange”) 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 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

LTSE proposes a rule change to adopt rules relating to the trading of Exchange Traded Products (“ETPs”) on an unlisted trading privileges (“UTP”) basis.

The text of the proposed rule change is available at the Exchange’s website at <https://longtermstockexchange.com/>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement on 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to adopt rules to allow for trading securities on a UTP basis. The Exchange proposes to adopt LTSE Rule 14.350, which would address securities traded pursuant to UTP and would set standards for certain equity derivative securities that are identical to the rules of other equity exchanges,⁴ but for changes to the terminology used by the Exchange (i.e., “Member” instead of “ETP Holder”) and the placement of two definitions directly within the rule (i.e., the definitions of “Exchange Traded Product” and “UTP Exchange Traded Product” in proposed Rule 14.350(b)).

Proposed Rule 14.350(a) would allow the Exchange to extend UTP to any security that is an NMS Stock (as defined in Rule 600 under Regulation NMS) 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.⁵ Any such security to which UTP is extended would be subject to all of the Exchange’s rules applicable to trading on the Exchange, unless otherwise noted.

Proposed Rule 14.350(b) would adopt a definition of “Exchange Traded Product” to mean a security that meets the definition of “derivative securities product” in Rule 19b-4(e)

⁴ See NYSE National Rule 5.1; see also Securities Exchange Act Release No. 83289 (May 17, 2018), 83 FR 23968 (May 23, 2018) (SR-NYSENAT-2018-02) (approving NYSE National Rule 5.1).

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

under the Exchange Act. The proposed rule also would adopt a definition of “UTP Exchange Traded Product” to mean one of the following Exchange Traded Products that trades on the Exchange pursuant to unlisted trading privileges: Equity Linked Notes, 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, 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.⁶

Any UTP Security⁷ that is a UTP Exchange Traded Product would be subject to the additional requirements set forth in the proposed subsections of Rule 14.350(b).

Specifically, proposed Rule 14.350(b)(1) would provide that the Exchange distribute an information circular prior to the commencement of trading in each UTP Exchange Traded Product that generally includes the same information as is contained in the information circular provided by the listing exchange, including (a) the special risks of trading the new Exchange Traded Product, (b) the Exchange’s rules that apply to the new Exchange Traded Product, and (c) information about the dissemination of value of the underlying assets or indices.

Proposed Rule 14.350(b)(2)(A) would set forth requirements regarding prospectus delivery requirements. Members would be subject to the prospectus delivery requirements under

⁶ The terms “Exchange Traded Product” and “UTP Exchange Traded Product” are identical to those terms as they are used in NYSE National Rule 5.1 and defined in NYSE National Rule 1.1(m). See supra text accompanying note 4.

⁷ “UTP Security” is defined as “any security that is not listed on the Exchange, but is traded on the Exchange pursuant to unlisted trading privileges.” LTSE Rule 1.160(vv).

the Securities Act of 1933, unless the UTP Exchange Traded Product is the subject of an order by the Securities and Exchange Commission exempting the product from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940⁸ and the product is not otherwise subject to prospectus delivery requirements under the Securities Act of 1933.

Proposed Rule 14.350(b)(2)(B) would require the Exchange to inform Members of the application of the provisions of this subparagraph to UTP Exchange Traded Products by means of an information circular. It also would require the Exchange to require that a Member of the Exchange provide each purchaser of UTP Exchange Traded Products a written description of the terms and characteristics of those securities, in a form approved by the Exchange or prepared by the open-ended management company issuing such securities, not later than the time a confirmation of the first transaction in such securities is delivered to the purchaser. In addition, a Member would need to include a written description of the terms and characteristics of these securities with any sales material relating to UTP Exchange Traded Products that is provided to customers or the public. Any other written materials provided by a Member to customers or the public making specific reference to the UTP Exchange Traded Products as an investment vehicle would need to include a statement substantially in the following form: “A circular describing the terms and characteristics of [the UTP Exchange Traded Products] has been prepared by the [open-ended management investment company name] and is available from your broker. It is recommended that you obtain and review such circular before purchasing [the UTP Exchange Traded Products].” A Member carrying an omnibus account for a non-Member would be required to inform such non-Member that execution of an order to purchase UTP Exchange

⁸ 15 U.S.C. 80a-24.

Traded Products for such omnibus account would be deemed to constitute an agreement by the non-Member to make such written description available to its customers on the same terms that are directly applicable to the Member under this proposed rule.

Proposed Rule 14.350(b)(2)(C) would provide that, upon request of a customer, a Member would need to provide to the customer a prospectus for the particular UTP Exchange Traded Product.

Proposed Rule 14.350(b)(3) would govern trading halts and would provide that the Exchange would halt trading in a UTP Exchange Traded Product as provided for in Exchange Rule 11.271. Nothing in proposed Rule 14.350(b)(3) would be intended to limit the power of the Exchange under its rules or procedures with respect to its ability to suspend trading in any securities if such suspension is necessary for the protection of investors or in the public interest.

Proposed Rule 14.350(b)(4) would set forth restrictions on Members acting as Market Makers on the Exchange in a UTP Exchange Traded Product 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”).

First, under proposed Rule 14.350(b)(A), Market Makers would need to file with the Exchange, in a manner prescribed by 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 (collectively with Reference Assets, “Related Instruments”), which the Member acting as a registered Market Maker on the Exchange may have or over which it may exercise investment discretion. No Market Maker would be permitted to trade in the underlying physical asset or commodity, related futures or options on futures, or

any other related derivatives, in an account in which a Member acting as a registered Market Maker on the Exchange, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by proposed Rule 14.350.

Second, under proposed Rule 14.350(b)(B), a Market Maker on the Exchange would, in a manner prescribed by the Exchange, be required to file with the Exchange and keep current a list identifying any accounts (“Related Instrument Trading Accounts”) for which Related Instruments are traded: (i) in which the Market Maker holds an interest; (ii) over which it has investment discretion; or (iii) in which it shares in the profits and/or losses. A Market Maker on the Exchange 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 proposed Rule 14.350.

Third, under proposed Rule 14.350(b)(C), in addition to the existing obligations under Exchange rules regarding the production of books and records, a Market Maker on the Exchange would be required to, upon request by the Exchange, make available to the Exchange any books, records, or other information pertaining to any Related Instrument Trading Account or to the account of any registered or non-registered employee affiliated with the Market Maker on the Exchange for which Related Instruments are traded.

Fourth, under proposed Rule 14.350(b)(D), a Market Maker on the Exchange would not be allowed to use any material nonpublic information in connection with trading a Related Instrument.

Finally, proposed Rule 14.350(b)(5) would provide that the Exchange will enter into comprehensive surveillance sharing agreements with markets that trade components of the index

or portfolio on which the UTP Exchange Traded Product is based to the same extent as the listing exchange's rules require the listing exchange to enter into comprehensive surveillance sharing agreements with such markets.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁰ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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 mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

Specifically, the Exchange believes that proposed Rule 14.350 would remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, would 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 ultimately lead to the

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(5).

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.¹¹ 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 proposed rule change would offer another venue for trading Exchange Traded Products and thereby promote broader competition among exchanges. The Exchange also believes that individuals and entities that are allowed 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 Exchange believes that proposed Rule 14.350, which would enumerate the categories of UTP Exchange Traded Products that the Exchange proposes to trade and would specify additional requirements relating to UTP Exchange Traded Products, would ensure the maintenance of a fair and orderly market and provide for mechanisms for the regulatory oversight of securities trading on a UTP basis on the Exchange, in compliance with Rule 12f-5 under the Act.¹²

The Exchange also believes that the proposed rule change supports the principles of Section 11A(a)(1) of the Act¹³ in that it seeks to ensure the economically efficient execution of securities transactions and fair competition among brokers and dealers, and among exchange

¹¹ See supra note 4.

¹² 17 CFR 240.12f-5.

¹³ 15 U.S.C 78k-1(a)(1).

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.

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.

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

LTSE 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

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 Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵ Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁶ and Rule 19b-4(f)(6) thereunder.¹⁷

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)¹⁸ 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:

¹⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 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.

¹⁸ 15 U.S.C. 78s(b)(2)(B).

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-LTSE-2020-06 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-LTSE-2020-06. 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-LTSE-2020-06 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

J. Matthew DeLesDernier
Assistant Secretary

¹⁹ 17 CFR 200.30-3(a)(12).