collection of withdrawal liability. Information provided to PBGC would be confidential to the extent provided in the Freedom of Information Act and the Privacy Act.

On June 21, 2018, PBGC published (at 83 FR 28871) a notice of its intent to request OMB approval of the survey of multiemployer pension plan withdrawal liability information described above. No comments were received on the proposed submission of information collection.

PBGC is requesting that OMB approve PBGC’s use of this survey for three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The survey initially would be sent to approximately 65 plans.4 PBGC estimates that each survey would require approximately 20 hours to complete by a combination of pension fund office staff (50%) and outside professionals (attorneys and actuaries) (50%). PBGC estimates a total hour burden of 650 hours (based on pension fund office time). The estimated dollar equivalent of this hour burden, based on an assumed hourly rate of $75 for administrative, clerical, and supervisory time is $48,750. PBGC estimates a total cost burden for the withdrawal liability survey of $260,000 (based on 650 attorney and actuary hours assuming an average hourly rate of $400). PBGC further estimates that the average burden will be 10 hours of pension fund office staff time and $4,000 per plan. After the survey is sent initially, PBGC expects to send the survey to fewer than 10 newly terminated and insolvent plans per year.

Issued in Washington, DC.

Hilary Duke,
Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

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SECURITIES AND EXCHANGE COMMISSION


August 22, 2018.

I. Introduction


On March 1, 2018, pursuant to Section 19(b)(2) of the Exchange Act,4 the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.5 On April 23, 2018, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act6 to determine whether to approve or disapprove the proposed rule change.7 The comment period and rebuttal comment period for the Order Instituting Proceedings closed on May 18, 2018, and June 1, 2018, respectively. Finally, on July 18, 2018, the Commission extended the period for consideration of the proposed rule change to September 21, 2018.8 As of August 21, 2018, the Commission had received six comments on the proposed rule change.9

This order disapproves the proposed rule change. Although the Commission is disapproving this proposed rule change, the Commission emphasizes that its disapproval does not rest on an evaluation of whether bitcoin, or blockchain technology more generally, has utility or value as an innovation or an investment. Rather, the Commission is disapproving this proposed rule change because, as discussed below, the Exchange has not met its burden under the Exchange Act and the Commission’s Rules of Practice to demonstrate that its proposal is consistent with the requirements of the Exchange Act Section 6(b)(5), in particular the requirement that a national securities exchange’s rules be designed to prevent fraudulent and manipulative acts and practices.10 Among other things, the Exchange has offered no record evidence to demonstrate that bitcoin futures markets are “markets of significant size.” That failure is critical because, as explained below, the Exchange has failed to establish that other means to prevent fraudulent and manipulative acts and practices will be sufficient, and therefore surveillance-sharing with a regulated market of significant size related to bitcoin is necessary to satisfy the statutory requirement that the Exchange’s rules be designed to prevent fraudulent and manipulative acts and practices.11

II. Description of the Proposal

The Exchange proposes to list and trade the Shares under NYSE Arca Rule 8.200–E, Commentary .02, which


See infra notes 32–34 and accompanying text.
contracts, on or before 11:00 a.m. E.T. for the Bitcoin Futures Contract and may reflect trades occurring and published by CME, CBOE, or another U.S. exchange that subsequently trades bitcoin futures contracts outside the normal trading session for the Bitcoin Futures Contract. Each Fund will compute its NAV as of 11:00 a.m. E.T., or such earlier time that the NYSE may close. According to the Notice, each Fund, under normal market conditions, will seek to achieve its daily investment objective by investing in the Bitcoin Futures Contract, swaps on the Bitcoin Futures Contract, or listed options on bitcoin or the Bitcoin Futures Contract (collectively, “Bitcoin Financial Instruments”). The Funds’ investments in Bitcoin Financial Instruments will be used to produce economically “leveraged” or “inverse leveraged” investment results for the Funds. A Fund may invest in the listed options and swaps described above in a manner consistent with its investment objective in situations where the Sponsor believes that investing in such financial instruments is in the best interests of a Fund. In addition, a Fund may invest in swaps referencing the Bitcoin Futures Contract if the market for a specific bitcoin futures contract experiences emergencies or if position, price, or accountability limits (if any) are reached with respect to a specific bitcoin futures contract. Each trading day at the close of the U.S. equity markets, each Fund will position its portfolio to ensure that the Fund’s exposure to the target benchmark is consistent with the Fund’s investment objective. The Notice also states: [U]nlike the futures markets for traditional physical commodities, the market for exchange-traded bitcoin futures contract[s] has limited trading history and operational experience and may be riskier, less liquid, more volatile and more vulnerable to economic, market and industry changes than more established futures markets. The liquidity of the market will depend on, among other things, the adoption of bitcoin and the commercial and speculative interest in the market for the ability to hedge against the price of bitcoin with exchange-traded bitcoin futures contracts. The Exchange represents that trading in the Shares of each Fund will be subject to the existing trading servisons administered by the Exchange, as well as cross-market servisons administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange asserts that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

III. Discussion

A. The Applicable Standard for Review

The Commission must consider whether the Exchange’s proposal is consistent with Exchange Act Section 6(b)(5), which requires, in relevant part, that the rules of a national securities exchange be designed “to prevent fraudulent and manipulative acts and practices” and “to protect investors and the public interest.” Under the Commission’s Rules of Practice, the “burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization [‘SRO’] that proposed the rule change.”

The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding, and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations. Moreover, “unquestioning reliance” on an SRO’s representations in a proposed rule change is not sufficient to justify Commission approval of a proposed rule change.

B. Preventing Fraudulent and Manipulative Practices

1. Applicable Legal Standard

To approve the Exchange’s proposal to list the Shares, the Commission must be able to find that the proposal is, consistent with Exchange Act Section 6(b)(5), “designed to prevent fraudulent
and manipulative acts and practices.”  

As the Commission recently explained in an order disapproving a listing proposal for the Winklevoss Bitcoin Trust (“Winklevoss Order”), although surveillance-sharing agreements are not the exclusive means by which an exchange-traded product (“ETP”) listing exchange can meet its obligations under Exchange Act Section 6(b)(5), such agreements are a widely used means for exchanges that list ETPs to meet their obligations, and the Commission has historically recognized their importance.  

The Commission has therefore determined that, if the listing exchange for an ETP fails to establish that other means to prevent fraudulent and manipulative acts and practices will be sufficient, the listing exchange must enter into a surveillance-sharing agreement with a regulated market of significant size because “[t]hese agreements provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.”  

Accordingly, a surveillance-sharing agreement with a regulated market of significant size is required to ensure that, in compliance with the Exchange Act, the proposal is “designed to prevent fraudulent and manipulative acts and practices.”  

In this context, the Commission has interpreted the terms “significant market” and “market of significant size” to include a market (or group of markets) as to which (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP, so that a surveillance-sharing agreement would assist the ETP listing market in detecting and deterring misconduct, and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market. Thus, a surveillance-sharing agreement must be entered into with a “significant market” to assist in detecting and deterring manipulation of the ETP, because someone attempting to manipulate the ETP is reasonably likely to also engage in trading activity on that “significant market.”  

Although the Winklevoss Order applied these standards to a commodity-trust ETP based on bitcoin, the Commission believes that these standards are also appropriate for an ETP based on bitcoin futures. When approving the first commodity-futures ETP, the Commission specifically noted that “[i]nformation-sharing agreements with primary markets trading index components underlying a derivative product are an important part of a self-regulatory organization’s ability to monitor for trading abuses in derivative products.”  

And the Commission’s approval orders for commodity-futures ETPs consistently note the ability of an ETP listing exchange to share surveillance information either through surveillance-sharing agreements or through membership by the listing exchange and the relevant futures exchanges in the Intermarket Surveillance Group.  

While the definition is an example that will provide guidance to market participants.  


Commission in those orders did not explicitly undertake an analysis of whether the related futures markets were of “significant size,” the exchanges proposing commodity-futures ETPs on a single reference asset or benchmark generally made representations regarding the trading volume of the underlying futures markets,37 and the

that NYSEArca “can obtain market surveillance information, including information derived from transaction information, with respect to transactions occurring on exchanges that are members of ISG, including CME, CBOT, COMEX, NYMEX, . . . and ICE Futures U.S.,” that NYSEArca “currently has in place a comprehensive surveillance sharing agreement with each of CME, NYMEX, ICE Futures Europe, and KCBOT,” and “that while the Fund may invest in futures contracts or options on futures contracts which trade on markets that are not members of ISG or with which [NYSEArca] does not have in place a comprehensive surveillance agreement, such instruments will never represent more than 10% of the Fund’s holdings”; Securities Exchange Act Release No. 73561 (Nov. 7, 2014), 79 FR 68329, 68330 (Nov. 14, 2014); Securities Exchange Act Release No. 28488 (Apr. 29, 2010) (approval order noted that “FINRA may obtain trading information regarding trading in the Shares and Coal Futures from such markets and other entities that are members of ISG or with which [NYSEArca] has in place a CSSA” and that “CME is a member of the ISG or with which [NYSEArca] has in place a CSSA”); Securities Exchange Act Release No. 82390 (Dec. 22, 2017), 82 FR 61625, 61631, 61634 (Dec. 28, 2017) (NYSEArca–2017–107) (approval order noted that NYSEArca “may obtain information regarding trades on Futures and Freight Futures from markets and other entities that are members of ISG or with which [NYSEArca] has in place a CSSA” and that “not more than 10% of the net assets of the Fund in the aggregate invested in Freight Futures or options on Freight Futures shall consist of derivatives whose principal market is not a member of the ISG or is a market with which [NYSEArca] does not have a CSSA”).

37 See, e.g., Securities Exchange Act Release No. 62213 (June 3, 2010), 75 FR 38282 (June 9, 2010) (SR–NYSEArca–2010–22) (notice of proposed rule change included NYSEArca’s representations that: (i) natural gas futures volume on Chicago Board of Trade (“CBOT”) for 2008 and 2009 (through November 30, 2009) was 95,934,739 contracts and 47,754,866 contracts respectively; as of March 16, 2010, CBOT open interest for corn futures was 1,118,103 contracts, and open interest for near month futures was 447,554 contracts; (ii) the corn futures price was $18,317.50 ($3.6675 per bushel and 5,000 bushels per contract), and the approximate value of all outstanding contracts was $20.5 billion; (iii) as of March 16, 2010, open interest in corn swaps cleared on CBOT was approximately 2,100 contracts, with an approximate value of $38.5 million; and (iv) the position limits for all months is 22,000 corn contracts, and the total value of contracts if position limits were reached would be approximately $403.5 million (based on the $4.405 contract price); and (v) the position limits for all months is 15,000 sugar contracts, and the approximate value of all outstanding contracts was $32.1 billion; (iv) the position limits for all months is 2,500 MMT per month futures was 47,313 contracts; (ii) the position limits for all months is 22,000 crude oil contracts, and the total value of contracts if position limits were reached would be approximately $528,600,000 million (based on the $4.405 contract price); and (v) as of October 29, 2010, open interest in natural gas swaps cleared on NYMEX was approximately 2,618,092 contracts, with an approximate value of $2,257,751,300; (ii) as of October 29, 2010, NYMEX open interest for natural gas futures was 794,741 contracts, and open interest for near month futures was 47,313 contracts; (iii) the position limits for all months is 20,000 WTI crude oil contracts, and the total value of contracts if position limits were reached would be approximately $528,600,000 ($24,920.00 contract price); and (v) as of October 29, 2010, open interest in crude oil futures cleared on ICE Futures for 2010 and 2011 (through April 29, 2011) was 27,848,391 contracts and 9,045,069 contracts, respectively; (vi) as of October 29, 2010, open interest for wheat futures contracts on CME was $11.56 billion, and AUD/USD futures contracts had an average daily trading volume in 2011 of 123,006 contracts; (ii) as of December 30, 2011, open interest in CAD/USD futures contracts traded on CME was $11.66 billion, and CAD/USD futures contracts had an average daily trading volume in 2011 of 89,667 contracts; (iii) as of December 30, 2011, open interest in USD/JPY futures contracts traded on CME was $4.99 billion, and CHF/USD futures contracts had an average daily trading volume in 2011 of 40,955 contracts; (iv) futures contracts based on the U.S. Dollar Index ("USDIX") were listed on November 20, 1985, and options on the USDIX futures contracts began trading on September 3, 1986; (v) as of December 30, 2011, open interest in USD/JPY futures contracts traded on ICE Futures was $25.75 billion, and EUR/USD futures contracts had an average daily trading volume in 2011 of 30,341 contracts; (vi) as of December 30, 2011, open interest in EUR/USD futures contracts traded on ICE Futures was $25.75 billion, and EUR/USD futures contracts had an average daily trading volume in 2011 of 336,947 contracts; and (vii) as of December 30, 2011, open interest in JPY/USD futures contracts traded on ICE Futures was $25.75 billion, and JPY/USD futures contracts had an average daily trading volume in 2011 of 113,476 contracts, Securities Exchange Act Release No. 60180 (Jan. 18, 2012), 77 FR 3532, 3534–35 (Jan. 24, Continued
Commission was in each of those cases dealing with a large futures market that had been trading for a number of years before an exchange proposed an ETP based on those futures. And where the Commission has considered a proposed ETP based on futures that had only a proposed rule change included Amex’s representations that annual daily contract volume on NYMEX for natural gas futures from 2001 through October 2006 was 47,457, 97,431, 76,148, 70,048, 76,265, and 102,097, respectively, Securities Exchange Act Release No. 55372 (Feb. 28, 2007, 72 FR 10207 (2007)).

bitcoin derivatives desks.41 In addition, the commenter suggests that questions about bitcoin derivatives markets can be addressed through market depth analyses, discussions with potential bitcoin derivatives liquidity providers, and analyses of order and trade data across CME and CBOE to determine the plausibility of simultaneous liquidity collapses on both bitcoin future markets.42

This commenter states that a commonly cited factor mitigating possible susceptibility to manipulation is the securities exchanges’ own surveillance procedures, in addition to the futures exchanges’ surveillance procedures and market surveillance and oversight by the Commodity Futures Trading Commission (“CFTC”). This commenter cites statements by the CFTC that it has the legal authority and means to police certain spot markets for fraud and manipulation through “heightened review” collaboration with exchanges, that exchanges will provide the CFTC surveillance team with trade settlement data upon request, and that the exchanges will enter into information-sharing agreements with spot market platforms and monitor trading activity on the spot markets. The commenter also states that the Gemini exchange has announced that it would use Nasdaq’s market surveillance system to monitor its marketplace.43

This commenter further asserts that market surveillance is generally a prerequisite to identifying potential market manipulation and discourages market manipulation through “a heightened review” collaboration with exchanges, that exchanges will provide the CFTC surveillance team with trade settlement data upon request, and that the exchanges will enter into information-sharing agreements with spot market platforms and monitor trading activity on the spot markets. The commenter also states that the Gemini exchange has announced that it would use Nasdaq’s market surveillance system to monitor its marketplace.43


3. Analysis

Unlike previous proposals for bitcoin-based ETPs, the Exchange does not

assert here that bitcoin prices or markets are inherently resistant to manipulation. Instead, the Exchange asserts that its existing surveillance procedures (including its ability to review activity by its members) and its ability to share surveillance information with U.S. futures exchanges are sufficient to meet the requirements of Exchange Act Section 6(b)(5).47 One commenter also asserts that the exchange’s own surveillance procedures, along with market surveillance and oversight by the CFTC, can mitigate manipulation.48

While the Exchange would, pursuant to its listing rules, be able to obtain certain information regarding trading in the Shares and in the underlying bitcoin or any bitcoin derivative through registered market makers,49 this trade information would be limited to the activities of market participants who trade on the Exchange. Furthermore, neither the Exchange’s ability to surveil trading in the Shares nor its ability to share surveillance information with other securities exchanges trading the Shares would give the Exchange insight into the activity and identity of market participants who trade in bitcoin futures contracts or other bitcoin derivatives or who trade in the underlying bitcoin spot markets, where a substantial majority of trading, the Commission concluded in the Winklevoss Order, “occurs on unregulated venues overseas that are relatively new and that, generally, appear to trade only digital assets.”50

Thus, consistent with its determination in the Winklevoss Order,51 and with the Commission’s previous orders approving commodity-futures ETPs,52 the Commission believes that the Exchange must demonstrate that it has in place a surveillance-sharing agreement with a regulated market of significant size related to bitcoin, because “[s]uch agreements provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.”53

The Exchange represents that it is able to share surveillance information with CME and CBOE, which are bitcoin futures markets regulated by the CFTC, through membership in the Intermarket Surveillance Group.54 Nonetheless, the Commission must disapprove the proposal, because there is no evidence in the record demonstrating that CME’s and CBOE’s bitcoin futures markets are markets of significant size.

The Order Instituting Proceedings sought comment on whether the CME and CBOE bitcoin futures markets are markets of significant size, but the Exchange has not responded to any of the questions in the Order Instituting Proceedings, and the only analysis of the underlying futures markets the Exchange has provided in its proposed rule change are the generic statements that the market for bitcoin futures contracts “has limited trading history and operational experience” and that the liquidity of these markets will depend on the adoption of bitcoin and interest in the market for these futures.56

Thus, there is no basis in the record on which the Commission can conclude that the bitcoin futures markets are markets of significant size. Publicly available data show that the median daily notional trading volume, from inception through August 10, 2018, has been 14,185 bitcoins on CME and 5,184

51 See id. at 37510 (finding that “traditional means” of surveillance were not sufficient in the absence of a surveillance-sharing agreement with a regulated market of significant size related to the underlying asset).
52 See supra note 36 and accompanying text (noting previous commodity-futures ETPs where surveillance sharing in place between ETP listing exchange and underlying futures exchanges).
54 See https://www.isgportal.org/isgPortal/public/members.htm (listing the current members and affiliate members of the Intermarket Surveillance Group).
55 See Order Instituting Proceedings, supra note 7, 83 FR at 18605.
56 Notice, supra note 3, 83 FR at 3383; see also supra note 22 and accompanying text.
bitcoins on CBOE, and that the median daily notional value of open interest on CME and CBOE during the same period has been 10,145 bitcoins and 5,601 bitcoins, respectively. But while these futures contract figures are readily available, meaningful analysis of the size of the CME or CBOE markets relative to the underlying bitcoin spot market is challenging, because reliable data about the spot market, including its overall size, are unavailable. The Commission also notes that in recent testimony CFTC Chairman Giancarlo characterized the volume of the bitcoin futures markets as “quite small.” Additionally, the President and COO of CBOE recently acknowledged in a letter to the Commission staff that “the current bitcoin futures trading volumes on Cboe Futures Exchange and CME may not currently be sufficient to support ETPs seeking 100% long or short exposure to bitcoin.” These statements reinforce the Commission’s conclusion that there is insufficient evidence to determine that the CME and CBOE bitcoin futures markets are markets of significant size. Furthermore, according to the Notice, under normal market conditions, each Fund intends to obtain exposure to its target benchmark by investing in the Bitcoin Futures Contract as well as other Bitcoin Financial Instruments, which could be options on bitcoin or the Bitcoin Futures Contract and swaps on the Bitcoin Futures Contract. The Funds’ investments in Bitcoin Financial Instruments are used to produce economically “leveraged” or “inverse leveraged” investment results for the Funds. The Notice does not establish any limit on the Funds’ holdings of these other bitcoin-related derivatives; it provides no analysis of the size and liquidity of markets for those derivatives; and it does not discuss whether the Exchange has the ability to share surveillance information with the markets for these derivatives. Thus, as to what might be a substantial proportion of the Funds’ portfolios, the Commission is unable to conclude that surveillance-sharing will be available, that the related markets are regulated, or that the related markets are of significant size.

While one commenter suggests that the market for bitcoin derivatives other than exchange-traded futures appears to be developing—and that the offering of long and short bitcoin ETPs “raises the possibility that market makers in Bitcoin derivatives could make two-sided markets if interest in both the long and short ETFs is similar in magnitude”—these speculative statements do not provide a basis for the Commission to conclude that the non-exchange-traded bitcoin derivatives market is now, or may eventually be, of significant size.

The Commission therefore concludes that Exchange has not demonstrated that it has entered into a surveillance-sharing agreement with a regulated market of significant size related to bitcoin, or that, given the current absence of such an agreement, the exchange’s own surveillance procedures described above would, by themselves, be sufficient to satisfy the requirement of Exchange Act Section 6(b)(5) that an exchange’s rules be designed to prevent fraudulent and manipulative acts and practices. While CME and CBOE are regulated markets for bitcoin derivatives, there is no basis in the record for the Commission to conclude that these markets are of significant size. Additionally, because bitcoin futures have been trading on CME and CBOE only since December 2017, the Commission has no basis on which to predict how these markets may grow or develop over time, or whether or when they may reach significant size.

Although the Exchange has not demonstrated that a regulated bitcoin futures market of significant size currently exists, the Commission is not suggesting that the development of such a market would automatically require approval of a proposed rule change seeking to list and trade shares of an ETP holding bitcoins as an asset. The Commission would need to analyze the facts and circumstances of any particular proposal and examine whether any unique features of a bitcoin futures market would warrant further analysis before approval.

C. Protecting Investors and the Public Interest

1. Comments Received

One commenter asserts that approval of the proposed ETPs would provide greater security in the cryptocurrency market, such as greater liquidity, transparency, and safe custody of assets. Another commenter asserts that promoting the adoption of bitcoin will allow “paradigms within the cryptocurrency ecosystem,” such as initial coin offerings, to “break up the stranglehold cartels have on accruing and owning capital, as the funding model becomes democratized.”

One commenter suggests that the Commission could address some of its concerns about the proposed ETPs by working with self-regulatory organizations, and in particular FINRA, to create bitcoin and cryptocurrency-related asset suitability requirements. In addition, this commenter suggests that targeted disclosure requirements could make investors aware of volatility, discourage retail investors from investing more than a small portion of their portfolio in cryptocurrency-related assets, and present historical scenarios to retail investors to demonstrate how an instrument such as a particular bitcoin ETP would have performed over time. This commenter believes that suitability requirements are less prescriptive than an effective ban on a class of product and that they could balance the Commission’s interest in protecting retail investors against its interest in allowing cryptocurrency-related asset markets to continue to develop in regulated markets where the Commission can observe their performance closely.
2. Analysis

The Exchange asserts that approval of the proposal would enhance competition among market participants, to the benefit of investors.69 One commenter asserts that approval of the proposal will provide greater security, transparency, and liquidity, as well as safe custody, for investors in cryptocurrencies.70 And one commenter suggests that the Commission should seek to protect investors through disclosure requirements or suitability standards, rather than disapproving a bitcoin-ETP proposal.71

The Commission acknowledges that, compared to trading in unregulated bitcoin spot markets, trading a bitcoin-based ETP on a national securities exchange may provide some additional protection to investors, but the Commission must consider this potential benefit in the broader context of whether the proposed rules meet each of the applicable requirements of the Exchange Act. Pursuant to Section 19(b)(2) of the Exchange Act, the Commission must disapprove a proposed rule change filed by a national securities exchange if it does not find that the proposed rule change is consistent with the applicable requirements of the Exchange Act—including the requirement under Section 6(b)(5) that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices.

Thus, even if a proposed rule change would provide certain benefits to investors and the markets, the proposed rule change may still fail to meet other requirements under the Exchange Act. For the reasons discussed above, the Exchange has not met its burden under the Exchange Act and the Commission’s Rules of Practice to demonstrate that its proposed rule change is consistent with Exchange Act Section 6(b)(5).72

IV. Conclusion

For the reasons set forth above, the Commission does not find, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(b)(5) of the Exchange Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act, that proposed rule change SR–NYSEArca–2018–02 is disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.73

Brent J. Fields,
Secretary.

[FR Doc. 2018–18577 Filed 8–27–18; 8:45 am]

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69 See Notice, supra note 3, 83 FR at 3387.
70 See supra note 66 and accompanying text.
71 See supra note 68 and accompanying text. The Commission also notes that the Exchange did not respond to questions in the Order Instituting Proceedings seeking comment on how the Funds’ striking NAV at 11:00 a.m. E.T. (five hours before the close of the regular trading session) would affect arbitrage, and what the potential effect on investors would be if the arbitrage mechanism were impaired. See Order Instituting Proceedings, supra note 7, 83 FR at 18605.
72 See Ahn Letter, supra note 9.
73 See Galt Letter, supra note 9; Santos Letter, supra note 9.
74 See David Letter, supra note 9; Santos Letter, supra note 9.
75 See David Letter, supra note 9.
76 See Williams Letter, supra note 9, at 1.
77 See Santos Letter, supra note 9.
78 In disapproving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f). See also supra note 67 and accompanying text.

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.31E Relating to Reserve Orders and Re-Name an Order Type

August 22, 2018.

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 August 10, 2018, NYSE American LLC (“Exchange” or “NYSE American”) filed with the Securities and Exchange Commission (“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

The Exchange proposes to amend Rule 7.31E relating to Reserve Orders and re-name an order type. 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 its Cash Equities Pillar Platform Rule 7.31E