

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-72632; File No. SR-NYSE-2014-36]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Proposing To Merge New York Block Exchange LLC into NYSE and, Effective as of the Consummation of the Merger, Delete the Text of the Limited Liability Company Agreement of New York Block Exchange LLC

July 16, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 9, 2014, 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 Exchange. 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 merge New York Block Exchange LLC (the “Company”) into NYSE (the “Merger”) and, effective as of the consummation of the Merger, delete the text of the Limited Liability Company Agreement (the “LLC Agreement”) of the Company. The text of the proposed rule change is available on the Exchange’s Web site 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 merge the Company into NYSE and, effective as of the consummation of the Merger, delete the text of the LLC Agreement.

Background

On January 22, 2009, the Securities and Exchange Commission (the “Commission”) approved on a pilot basis the governance structure proposed by the Exchange with respect to the New York Block Exchange (“NYBX”), an electronic trading facility of the Exchange for NYSE-listed securities that was established by means of the Company, as a joint venture between the Exchange and BIDS Holdings L.P. (“BIDS Holdings”).³ The Company owned and operated NYBX. The governance structure that was approved was reflected in the LLC Agreement, which was filed as a proposed rule with the Commission. Under that governance structure, the Exchange and BIDS Holdings each owned a 50% economic interest in the Company. In addition, the Exchange, through its wholly owned subsidiary NYSE Market, Inc., owned less than 10% of the aggregate limited partnership interest in BIDS Holdings. BIDS Holdings is the parent company of BIDS Trading, L.P. (“BIDS Trading”), which became a member organization of the Exchange in connection with the establishment of NYBX.

The foregoing ownership arrangements would have violated NYSE Rule 2B without an exception from the Commission.⁴ First, the Exchange’s indirect ownership interest in BIDS Trading would violate the prohibition in Rule 2B against the Exchange maintaining an ownership interest in a member organization. Second, BIDS Trading was an affiliate of an affiliate of the Exchange,⁵ which

would violate the prohibition in Rule 2B against a member of the Exchange having such status. In the Approval Order, the Commission permitted an exception to these two potential violations of NYSE Rule 2B, subject to a number of limitations and conditions, one of which was set forth in Commentary .01 of Rule 2B.⁶ The original 12-month pilot period expired on January 22, 2010 and was extended for four additional 12-month periods to January 22, 2014.⁷

The Exchange ceased operating NYBX on February 28, 2013 because, after years of operations, the facility did not garner enough volume to achieve critical mass and did not have strong customer support.⁸ Effective the same day, NYSE deleted Rule 1600, which governed NYBX functionality.⁹ Thereafter, on March 1, 2013, BIDS Trading terminated its membership with the Exchange and its affiliate NYSE MKT LLC. Once BIDS Trading was no longer a member organization of the Exchange or any of the Exchange’s affiliates, the Exchange deleted Commentary .01 to NYSE Rule 2B.¹⁰

On June 17, 2014, the Company redeemed the membership interest of BIDS Holdings for consideration of \$1.00. As a result, NYSE is now the sole member of the Company.

Proposed Rule Change

Because NYBX is no longer operating, NYSE proposes to merge the Company into NYSE in the Merger and repeal the text of the LLC Agreement in its entirety, effective as of the consummation of the Merger.

The Company is a limited liability company formed and validly existing under the laws of the State of Delaware. NYSE is a limited liability company organized and validly existing under the laws of the State of New York. The Delaware Limited Liability Company Act (the “DLLCA”) and the New York Limited Liability Company Law (the “NYLLCL”) each permits a limited liability company formed and existing under the DLLCA to merge with and

³ See Securities Exchange Act Release No. 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (SR-NYSE-2008-120) (the “Approval Order”).

⁴ NYSE Rule 2B provides, in relevant part, that “[w]ithout prior SEC approval, the Exchange or any entity with which it is affiliated shall not, directly or indirectly, acquire or maintain an ownership interest in a member organization. In addition, a member organization shall not be or become an affiliate of the Exchange, or an affiliate of any affiliate of the Exchange. . . . The term affiliate shall have the meaning specified in Rule 12b-2 under the Act.”

⁵ Specifically, NYBX is an affiliate of the Exchange, and BIDS Trading was an affiliate of NYBX based on their common control by BIDS Holdings. The affiliation in each case was the result of the 50% ownership interest in NYBX by each of the Exchange and BIDS Holdings.

⁶ See Approval Order, *supra* note 3, at 5018.

⁷ See Securities Exchange Act Release Nos. 61409 (January 22, 2010), 75 FR 4889 (January 29, 2010) (SR-NYSE-2010-04); 63545 (December 14, 2010), 75 FR 80088 (December 21, 2010) (SR-NYSE-2010-82); 66059 (December 27, 2011), 77 FR 145 (January 3, 2012) (SR-NYSE-2011-67); and 68658 (January 15, 2013), 78 FR 4524 (January 22, 2013) (SR-NYSE-2013-01).

⁸ See Securities Exchange Act Release No. 68861 (February 7, 2013), 78 FR 10226 (February 13, 2013) (SR-NYSE-2013-12).

⁹ *Id.*

¹⁰ See Securities Exchange Act Release No. 69225 (March 25, 2013), 78 FR 19340 (March 29, 2013) (SR-NYSE-2013-22).

¹ 15 U.S.C.78s(b)(1).

² 17 CFR 240.19b-4.

into a limited liability company organized and existing under the NYLLCL.

Following the effective date of this rule filing, the parties will execute the merger agreement. The certificates of merger will be filed in the State of Delaware and the State of New York, at which time the Company will cease to exist and NYSE will be the sole surviving company.

Article 13, Section 13.1 of the LLC Agreement requires any amendment to or repeal of the LLC Agreement to be either filed with, or filed with and approved by, the Commission under Section 19 of the Act before it is effective. Because NYBX has already ceased operating and the Exchange has already submitted two immediately effective proposed rule changes in connection therewith, and because the Company will no longer exist upon consummation of the Merger, the Exchange believes that the deletion of the text of the LLC Agreement should be immediately effective as of the consummation of the Merger.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² in particular, because it promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, helps to protect investors and the public interest. The Exchange believes that the proposal removes impediments to and perfects the mechanism of a free and open market by eliminating an obsolete governing document for a corporate entity that no longer has an operational purpose and thus will be eliminated via the Merger.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue, but rather would eliminate an obsolete governing document for a corporate entity that no longer has an operational purpose and thus will be eliminated via the Merger.

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 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, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6)(iii) thereunder.¹⁴

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that the proposed rule change will not affect investors or the public interest because NYBX already ceased operating in February 2013 and no public comments have been received about the cessation. In addition, the Exchange stated that permitting the proposed rule change will help the Exchange avoid unnecessary expenses for a corporate entity that is no longer operating. The Commission believes that the proposed rule change raises no novel issues. Moreover, the Commission believes that the proposed rule change is consistent with the protection of investors and the public interest, because it helps avoid investor confusion by eliminating an obsolete governing document for a corporation that no longer has an operational purpose and will be eliminated via the Merger. The Commission, therefore, waives the 30-day operative delay requirement and designates the proposed rule change to be operative upon filing.¹⁵

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

¹⁵ 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).

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 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-2014-36 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-2014-36. 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 Web site (<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 Web site viewing and printing in the Commission's Public Reference Section, 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 will also be available for inspection and copying at the NYSE's principal office. All comments received will be posted without change; the Commission does not edit personal

¹¹ 15 U.S.C. 78f(b).

¹² 5 U.S.C. 78f(b)(5).

identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2014–36 and should be submitted on or before August 12, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2014–17179 Filed 7–21–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72631; File No. SR–NYSEArca–2014–76]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change as Modified by Amendment No. 1 and Amendment No. 2 Proposing To List and Trade Shares of the Cambria Global Momentum ETF Under NYSE Arca Equities Rule 8.600

July 16, 2014.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b4 thereunder,³ notice is hereby given that, on July 1, 2014, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) 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. On July 14, the Exchange filed Amendment No. 1 to the proposed rule change.⁴ On July 15, the Exchange filed Amendment No. 2 to the proposed rule change.⁵ 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

1. The Exchange proposes to list and trade shares of the Cambria Global Momentum ETF under NYSE Arca Equities Rule 8.600 (“Managed Fund Shares”). The text of the proposed rule change is available on the Exchange’s Web site 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 list and trade shares (“Shares”) of the following under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares⁶: Cambria Global Momentum ETF (“Fund”).⁷ The Shares will be offered by the Cambria ETF Trust (the “Trust”), a Delaware statutory

trust which is registered with the Commission as an open-end management investment company.⁸ Cambria Investment Management, L.P. (“Cambria” or the “Adviser”) will serve as the investment adviser of the Fund. SEI Investments Distribution Co. (the “Distributor”) will be the principal underwriter and distributor of the Fund’s Shares. SEI Investments Global Funds Services (“SEI”) will serve as the fund accountant and administrator of the Fund. Brown Brothers Harriman & Co. will serve as the Custodian and Transfer Agent of the Fund’s assets.⁹

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund’s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund’s portfolio.¹⁰ Commentary .06 to Rule

⁶ A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (“1940 Act”) organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

⁷ The Commission has previously approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600, including actively managed funds that operate as asset allocation funds or “funds of funds,” as described below. See, e.g., Securities Exchange Act Release Nos. 71999 (April 23, 2014), 79 FR 24040 (April 29, 2014) (SR–NYSEArca–2014–19) (order approving Exchange listing and trading of four actively-managed asset allocation funds of iShares U.S. ETF Trust); Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR–NYSEArca–2009–55) (order approving listing and trading of Dent Tactical ETF); 62502 (July 15, 2010), 75 FR 42471 (July 21, 2010) (SR–NYSEArca–2010–57) (order approving listing and trading of AdvisorShares WCM/BNY Mellon Focused Growth ADR ETF); 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR–NYSEArca–2010–79) (order approving listing and trading of Cambria Global Tactical ETF).

⁸ The Trust will be registered under the 1940 Act. On March 4, 2014, the Trust filed an amendment to the Trust’s registration statement on Form N–1A under the Securities Act of 1933 (the “1933 Act”) (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333–180879 and 811–22704) (the “Registration Statement”). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 30340 (January 4, 2013) (“Exemptive Order”). Investments made by the Fund will comply with the conditions set forth in the Exemptive Order.

⁹ This Amendment No. 2 to SR–NYSEArca–2014–76 replaces SR–NYSEArca–2014–76 as originally filed and Amendment No. 1 thereto, and supersedes such filings in their entirety.

¹⁰ An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii)

Continued

¹⁶ 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.

⁴ Amendment No. 1 replaced and superseded the original filing in its entirety.

⁵ Amendment No. 2 replaces and supersedes Amendment No. 1 in its entirety.