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

In accordance with Section 6(b)(8) of the Act,[12] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that the proposed change would place any burden on intramarket competition that is not necessary or appropriate.

The proposed extension of the waiver is not designed to affect competition, but rather to provide relief to Users that, while a Rule 7.1 closure is in effect, have no option but to use the Hot Hands service.

The proposed extension of the waiver would not apply differently to distinct types or sizes of market participants. Rather, all Users whose equipment requires work during the extension of the Data Center closure would have the resulting fees waived, and the extension of the waiver would apply uniformly to all Users during the period.

Intermarket Competition

The Exchange does not believe that the proposed change would impose any burden on intermarket competition that is not necessary or appropriate.

The Exchange believes that the proposed change would not affect the competitive landscape among the national securities exchanges, as the Hot Hands service is solely charged within co-location to existing Users, and would be temporary.

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [13] of the Act and subparagraph (f)(2) of Rule 19b–4 [14] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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) [15] of the Act to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

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

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov'' rule-comments@sec.gov.* Please include File Number SR–NYSENAT–2020–20 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–NYSENAT–2020–20. 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 submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSENAT–2020–20 and should be submitted on or before July 27, 2020.

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

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2020–14379 Filed 7–2–20; 8:45 am]

**BILLING CODE 8011–01–P**

[12] 15 U.S.C. 78f(b)(8).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(2).

[15] 15 U.S.C. 78s(b)(2)(B).

[16] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–89184]**

## Order Under Section 17(h)(4) of the Securities Exchange Act of 1934 Granting Exemption from Rule 17h–1T and Rule 17h–2T for Certain Broker-Dealers Maintaining Capital, Including Subordinated Debt of Greater Than $20 Million But Less Than $50 Million

June 29, 2020.

## I. Introduction

Section 17(h) was added to the Securities Exchange Act of 1934 (''Exchange Act'') to address the concern that financial problems of a broker-dealer's affiliate could cause the broker-dealer to fail or experience significant financial difficulties.[1] The Securities and Exchange Commission (''Commission'') adopted Rules 17h–1T and 17h–2T under Section 17(h) of the Exchange Act.[2] As discussed below, these rules contain provisions that exempt certain broker-dealers from the requirements of the rules. This order exempts from the requirements of the rules broker-dealers that do not hold funds or securities for, or owe money or securities to, customers and do not carry customer accounts, or that are exempt from Rule 15c3–3 pursuant to paragraph (k)(2) of that rule, and that maintain total assets of less than $1 billion and capital, including debt subordinated in

[1] *See Final Temporary Risk Assessment Rules,* Exchange Act Release No. 30929 (July 16, 1992), 57 FR 32159 (July 21, 1992).

[2] *See* 15 U.S.C. 78q(h) (''Section 17h of the Exchange Act''); 17 CFR 240.17h–1T (''Rule 17h–1T''); 17 CFR 240.17h–2T (''Rule 17h–2T'').

accordance with appendix D of Rule 15c3–1 under the Exchange Act (''Rule 15c3–1d''), of less than $50 million.[3]

Rule 17h–1T requires a broker-dealer that is not exempt under paragraph (d) of the Rule to maintain and preserve certain records, including: (1) An organizational chart that includes the broker-dealer and its affiliates; (2) policies, procedures, or systems concerning methods for monitoring and controlling financial and operational risks to the broker-dealer resulting from the activities of its affiliates; (3) a description of material pending legal and arbitration proceedings involving the broker-dealer or its affiliates; (4) consolidating and consolidated financial statements; and (5) the broker-dealer's securities and commodities position records. Rule 17h–2T requires a broker-dealer that is not exempt under paragraph (b) of the Rule to file Form 17–H with the Commission on a quarterly basis. The form elicits information concerning certain of the broker-dealer's affiliates.[4] Paragraph (d) of Rule 17h–1T and paragraph (b) of Rule 17h–2T exempt from their respective requirements certain categories of broker-dealers, as long as the broker-dealers maintain capital of less than $20 million (''$20 million exemption''). These categories of broker-dealers include: (1) broker-dealers that are exempt from Rule 15c3–3 pursuant to paragraph (k)(2) of that rule; and (2) broker-dealers that do not hold funds or securities for customers, owe money or securities to customers, or carry the accounts of customers.

## II. Discussion

Section 17(h)(4) of the Exchange Act provides that the Commission by rule or order may exempt any person or class of persons, under such terms and conditions and for such periods as the Commission shall provide in such rule or order, from the provisions of Section 17(h) of the Exchange Act, and the rules thereunder. The statute further provides that, in granting such exemptions, the Commission shall consider, among other factors:

- Whether information of the type required under section 17(h) of the Exchange Act is available from a supervisory agency (as defined in section 3401(6)of title 12), a State insurance commission or similar State agency, the Commodity Futures Trading Commission (''CFTC''), or a similar foreign regulator;
- The primary business of any associated person;
- The nature and extent of domestic or foreign regulation of the associated person's activities;
- The nature and extent of the registered person's securities activities; and
- With respect to the registered person and its associated persons, on a consolidated basis, the amount and proportion of assets devoted to, and revenues derived from, activities in the United States securities markets.

The Commission has administered the risk assessment program under Section 17(h) of the Exchange Act for 28 years. Based on this experience, the Commission believes it is appropriate to raise by order the threshold for the $20 million exemption to $50 million, provided the broker-dealer maintains less than $1 billion in total assets.

In adopting the $20 million exemption (rather than a $5 million exemption, which was proposed),[5] the Commission stated that the number of broker-dealers subject to Rules 17h–1T and 17h–2T would be reduced without a corresponding trade-off in risk.[6] Moreover, the Commission stated that its staff intended to focus its efforts on the largest 50 to 75 broker-dealers.[7] Thus, from the outset, the Commission's risk assessment program under Section 17(h) of the Exchange Act sought to be risk-based and to focus on larger broker-dealers. Information filed by broker-dealers on Form X–17A–5 (''FOCUS Report'') indicates that for the subset of firms subject to Rules 17h–1T and 17h–2T, those maintaining $50 million or more in capital currently account for over 98% of total capital of subject broker-dealers. Similarly, for all broker-dealers, those maintaining $50 million or more in capital account for nearly 97% of the total capital of all broker-dealers. Based upon the current record of broker-dealers subject to Rules 17h–1T and 17h–2T maintained by Commission staff and information filed by broker-dealers in the FOCUS Reports and other information known to Commission staff, the Commission believes exempting certain broker-dealers that maintain total assets of less than $1 billion and maintain capital of greater than $20 million but less than $50 million will provide relief to approximately 59 broker-dealers or approximately 21% of the approximately 275 broker-dealers currently subject to Rules 17h–1T and 17h–2T.

Exempting certain firms that maintain total assets of less than $1 billion and maintain capital, including subordinated debt, of greater than $20 million but less than $50 million from Rules 17h–1T and 17h–2T is intended to reduce the number of broker-dealers subject to the rules without materially increasing risk, given that firms continuing to be subject to the rules account for over 98% of the total capital of firms subject to the rules prior to the issuance of this Order and nearly 97% of the total capital of all broker-dealers. The Commission is setting the ceiling for this exemption at $50 million with this goal in mind. Moreover, limiting the availability of this exemption to firms with total assets of less than $1 billion will prevent highly leveraged firms with relatively small levels of capital from availing themselves of the exemption. A broker-dealer with a high level of leverage and a small level of capital can pose heightened risks because it has less capital to absorb losses and, therefore, poses greater credit risk to its customers, counterparties, and other creditors. Thus, the Commission's risk assessment program will continue to focus on those broker-dealers and affiliates that conduct a substantial securities business and thus are in a position to potentially pose significant risk to investors and to the orderly, fair, and efficient functioning of the markets.[8] Moreover, increasing the exemption to $50 million will reduce the regulatory burden for a cohort of smaller broker-dealers that pose less risk to the orderly, fair, and efficient functioning of the markets relative to broker-dealers that will continue to be subject to the rules.

In considering this Order, the Commission focused on the fourth factor in Section 17(h)(4) of the Exchange Act (*i.e.,* the nature and extent of the person's securities activities).[9] Although the other four factors included

[3] For the purposes of the exemptions in Rule 17h–1T and Rule 17h–2T and this order, capital must be calculated pursuant to paragraph (d)(3) of Rule 17h–1T and paragraph (b)(3) of Rule 17h–2T.

[4] *See* Form 17–H, *available at* https://www.sec.gov/about/forms/form17-h.pdf.

[5] *See Proposed Temporary Risk Assessment Rules,* Exchange Act Release No. 29635 (Aug. 30, 1991), 56 FR 44016 (Sep. 6, 1991).

[6] *See Final Temporary Risk Assessment Rules,* 57 FR at 32164–65.

[7] *See Final Temporary Risk Assessment Rules,* 57 FR at 32165.

[8] Many of the largest broker-dealers, which use alternative methods of computing their net capital under Appendix E of Rule 15c3–1, are exempt from Rules 17h–1T and 17h–2T but are subject to heightened monitoring as part of the Commission's Risk Supervised Broker-Dealer Program. *See* 17 CFR 17h–1T(d)(4) and 17 CFR 17h–2T(b)(4). *See also* 17 CFR 240.15c3–1e.

[9] 15 U.S.C. 78q(h)(4). Section 17(h)(4) of the Exchange Act states that the HYPERLINK Commission by HYPERLINK rule or order may exempt any HYPERLINK person or class of HYPERLINK persons, under such terms and conditions and for such periods as the HYPERLINK

Continued

in Section 17(h)(4) of the Exchange Act were considered, the Commission determined they did not inform the exemption as the exemption does not alter the type of information required to be reported or preserved, does not vary in applicability based upon the business activities of or the extent of regulatory oversight over a broker-dealer's affiliate, and applies regardless of the extent of a broker-dealer and its affiliate conducting business in the United States.[10] More specifically, the cohort of broker-dealers that will be able to rely on this exemption maintains total assets of less than $1 billion and maintains capital, including subordinated debt, of greater than $20 million but less than $50 million, and do not hold funds or securities for, or owe money or securities to, customers and do not carry customer accounts, or that are exempt from Rule 15c3–3 pursuant to paragraph (k)(2) of that rule. These firms are relatively small in size, as measured by the amount of total assets and by the amount of capital (including subordinated debt) that they maintain. The Commission believes these exempted firms—because of their relative size and the fact that they do not hold customer funds or securities, or owe money or securities to, customers and do not carry customer accounts, or are exempt from Rule 15c3–3 pursuant to paragraph (k)(2) of that rule—present less risk to the financial markets. Consequently, the objectives of this exemption align most closely with the fourth factor in Section 17(h)(4) of the Exchange Act (*i.e.,* the nature and extent of the registered person's securities activities).

In light of changes in the financial services industry, including consolidation among financial services institutions, the Commission believes that this Order strikes an appropriate balance in terms of relieving certain broker-dealers—those that maintain total assets of less than $1 billion and maintain capital, including subordinated debt, of greater than $20 million but less than $50 million and that do not hold funds or securities for, or owe money or securities to, customers and do not carry customer accounts, or that are exempt from Rule 15c3–3 pursuant to paragraph (k)(2) of that rule —from the requirements of Rules 17h–1T and 17h–2T while continuing to subject to the rules those broker-dealers that pose greater risk to the financial markets, investors, and other market participants.

## III. Conclusion

*It is hereby ordered* pursuant to section 17(h)(4) of the Exchange Act that any broker-dealer that does not hold funds or securities for, or owe money or securities to, customers and does not carry the accounts of or for customers, or that is exempt from Rule 15c3–3 pursuant to paragraph (k)(2) of that rule, is hereby exempt from Rule 17h–1T and Rule 17h–2T, if it maintains total assets of less than $1 billion and capital, including debt subordinated in accordance with Rule 15c3–1d, of less than $50 million.[11]

By the Commission.

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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**BILLING CODE 8011–01–P**

Commission shall provide in such HYPERLINK rule or order, from the provisions of this subsection, and the HYPERLINK rules thereunder. In granting such exemptions, the HYPERLINK Commission shall consider, among other factors—

(A) whether information of the type required under this subsection is available from a supervisory HYPERLINK agency (as defined in section 3401(6) of title 12), a HYPERLINK State insurance HYPERLINK commission or similar HYPERLINK State agency, the Commodity Futures Trading Commission, or a similar foreign regulator;

(B) the primary business of any associated HYPERLINK person;

(C) the nature and extent of domestic or foreign regulation of the associated HYPERLINK person's activities;

(D) the nature and extent of the registered HYPERLINK person's HYPERLINK securities activities; and

(E) with respect to the registered HYPERLINK person and its associated HYPERLINK persons, on a consolidated basis, the amount and proportion of assets devoted to, and revenues derived from, activities in the United HYPERLINK States securities markets.

[10] 15 U.S.C. 78q(h)(4)(A)–(C) & (E).

[11] *See supra* note 3.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–89191; File No. SR–NYSEArca-2019–92]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, to List and Trade Four Series of Active Proxy Portfolio Shares Issued by T. Rowe Price Exchange-Traded Funds, Inc. Under NYSE Arca Rule 8.601–E

June 30, 2020

## I. Introduction

On December 23, 2019, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the following under NYSE Arca Rule 8.601–E (Active Proxy Portfolio Shares): T. Rowe Price Blue Chip Growth ETF, T. Rowe Price Dividend Growth ETF, T. Rowe Price Growth Stock ETF, and T. Rowe Price Equity Income ETF (''Funds'').[3] The proposed rule change was published for comment in the **Federal Register** on January 3, 2020.[4]

On February 13, 2020, pursuant to Section 19(b)(2) of the Act,[5] 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 disapprove the proposed rule change.[6] On March 31, 2020, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[7] On April 1, 2020, the Commission published Amendment No. 1 for notice and comment and instituted proceedings under Section 19(b)(2)(B) of the Act [8] to determine whether to approve or disapprove the proposed rule change.[9] On May 2020, 2020, the Exchange filed Amendment No. 2 to the

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

[2] 17 CFR 240.19b-4.

[3] The Exchange originally proposed to adopt NYSE Arca Rule 8.601–E to permit the Exchange to list and trade Managed Portfolio Securities, and to list and trade Shares of the Funds under proposed Exchange Rule 8.601–E (Managed Portfolio Securities). In Amendment No. 1, the Exchange removed the proposal to adopt proposed NYSE Arca Rule 8.601–E (Managed Portfolio Securities) and revised the proposal to seek to list and trade Shares of the Funds under proposed NYSE Arca Rule 8.601–E (Active Proxy Portfolio Shares). *See* Amendment No. 1, *infra* note 7. *See also* Amendment No. 6 to SR–NYSEArca-2019–95 (proposing to adopt NYSE Arca Rule 8.601–E to list and trade Active Proxy Portfolio Shares, available on the Commission's website at *https://www.sec.gov/comments/sr-nysearca-2019-95/srnysearca201995-7329866-218548.pdf.* The Commission recently approved the Exchange's proposed rule change to adopt NYSE Arca Rule 8.601–E to permit the listing and trading of Active Proxy Portfolio Shares. *See* Securities Exchange Act Release No. 89185 (June 29, 2020) (SR–NYSEArca-2019–95) (''Active Proxy Portfolio Shares Order'').

[4] *See* Securities Exchange Act Release No. 87865 (Dec. 30, 2019), 85 FR 380.

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 88197, 85 FR 9887 (Feb. 20, 2020). The Commission designated April 2, 2020, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[7] Amendment No. 1 is available on the Commission's website at *https://www.sec.gov/comments/sr-nysearca-2019-92/srnysearca201992-7015540-214975.pdf.*

[8] 15 U.S.C. 78s(b)(2)(B).

[9] *See* Securities Exchange Act Release No. 88535, 85 FR 19554 (April 7, 2020).