Martha Redding
Associate General Counsel
Assistant Secretary

February 12, 2020

VIA E-MAIL

Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: Securities Exchange Act Rel. 34-87542 (SR-NYSEArca-2019-81)

Dear Secretary:

NYSE Arca, Inc. filed the attached Amendment No. 1 to the above-referenced filing on February 12, 2020.

Sincerely,

Encl. (Amendment No. 1 to SR-NYSEArca-2019-81)

OMB APPROVAL
OMB Number: 3235-0045 Estimated average burden hours per response.....38

Required fields are shown with yellow backgrounds and asterisks.

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2019 - * 81
Amendment No. (req. for Amendments *) 1

Filing by NYSE Arca, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
☐	☑	☐	☑	☐	☐

Pilot	Extension of Time Period for Commission Action *	Date Expires *
☐	☐	

Rule

19b-4(f)(1) 19b-4(f)(4)
19b-4(f)(2) 19b-4(f)(5)
19b-4(f)(3) 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐

Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposes new Rule 5.2-E(j)(8) to establish generic listing standards for Derivative Securities Products

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Michael Last Name * Cavalier

Title * Counsel, NYSE Group Inc.

E-mail * [redacted]

Telephone * [redacted] Fax [redacted]

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 02/12/2020

By David De Gregorio

(Name *)

(Title *)

Senior Counsel

David De Gregorio,

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information * Add Remove View	The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
Exhibit 1 - Notice of Proposed Rule Change * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications Add Remove View Exhibit Sent As Paper Document ☐	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.
Exhibit 3 - Form, Report, or Questionnaire Add Remove View Exhibit Sent As Paper Document ☐	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.
Exhibit 4 - Marked Copies Add Remove View	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add Remove View	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.
Partial Amendment Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")[1] and Rule 19b-4 thereunder,[2] NYSE Arca, Inc. ("NYSE Arca" or the "Exchange"), proposes new Rule 5.2-E(j)(8) to establish generic listing standards for Derivative Securities Products that are permitted to operate in reliance on Rule 6c-11 under the Investment Company Act of 1940. In addition, the Exchange proposes to discontinue the quarterly reports currently required with respect to Managed Fund Shares listed on the Exchange pursuant to Commentary .01 to NYSE Arca Rule 8.600-E.

This Amendment No. 1 to SR-NYSEArca-2019-81 replaces SR-NYSEArca-2019-81 as originally filed and supersedes such filing in its entirety.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1 and the text of the proposed rule change is attached as Exhibit 5.

(b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action is required under the Exchange's governing documents. Therefore, the Exchange's internal procedures with respect to the proposed rule change are complete.

The person on the Exchange staff prepared to respond to questions and comments on the proposed rule change is:

Michael Cavalier
Counsel
NYSE Group, Inc.
[redacted]

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

2 17 CFR 240.19b-4.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The Exchange proposes new Rule 5.2-E(j)(8) to establish "generic" listing standards for Exchange-Traded Fund Shares, which are Derivative Securities Products[3] that are permitted to operate in reliance on Rule 6c-11 ("Rule 6c-11") under the Investment Company Act of 1940 ("1940 Act").[4] In addition, the Exchange proposes to discontinue the quarterly reports currently required with respect to Managed Fund Shares listed on the Exchange pursuant to Rule Commentary .01 to Rule 8.600-E.

The Exchange currently lists and trades shares of exchange-traded funds ("ETFs") under the generic listing criteria of NYSE Arca Rule 5.2(j)(3) for Investment Company Units or Commentary .01 to NYSE Arca Rule 8.600-E for Managed Fund Shares, or pursuant to a Securities and Exchange Commission ("Commission") approval order or notice of effectiveness under Section 19(b)(2) or Section 19(b)(3)(A), respectively, of the Act. Issuers of Investment Company Units and Managed Fund Shares have heretofore been required to submit an application for exemptive relief from certain provisions under the 1940 Act and to receive such relief pursuant to an exemptive order by the Commission. The Commission recently adopted Rule 6c-11 to permit ETFs that satisfy certain conditions to operate without obtaining an exemptive order from the Commission under the 1940 Act.[5] The regulatory framework provided in Rule 6c-11, therefore, will streamline current procedures and reduce the costs and time frames associated with bringing ETFs to market, thereby enhancing competition among ETF issuers and reducing costs for investors.[6]

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3 The term "Derivative Securities Product" is defined in Rule 1.1(k) to mean a security that meets the definition of "derivative securities product" in Rule 19b-4(e) under the Exchange Act. 17 CFR 240.19b-4(e). As provided under Rule 19b-4(e), the term "new derivative securities product" means any type of option, warrant, hybrid securities product or any other security, other than a single equity option or a security futures product, whose value is based, in whole or in part, upon the performance of, or interest in, an underlying instrument. The term "Exchange Act" is defined in Rule 1.1(q) to mean the Securities Exchange Act of 1934, as amended.

4 15 U.S.C. 80a-1.

5 See Release Nos. 33-10695; IC-33646; File No. S7-15-18 (Exchange-Traded Funds) (September 25, 2019), 84 FR 57162 (October 24, 2019) (the "Rule 6c-11 Release").

6 In approving the rule, the Commission stated that the "rule will modernize the regulatory framework for ETFs to reflect our more than two decades of experience with these investment products. The rule is designed to further

Rule 19b-4(e)(1) provides that the listing and trading of a new derivative securities product by a self-regulatory organization ("SRO") is not deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4,[7] if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the SRO has a surveillance program for the product class.[8] As contemplated by this Rule, the Exchange proposes new Rule 5.2-E(j)(8) to establish generic listing standards for ETFs that are permitted to operate in reliance on Rule 6c-11. An ETF listed under proposed Rule 5.2-E(j)(8) would therefore not need a separate proposed rule change pursuant to Rule 19b-4 before it can be listed and traded on the Exchange.

The Exchange believes that the proposed generic listing rules for Exchange-Traded Fund Shares, described below, would facilitate efficient procedures for ETFs that are permitted to operate in reliance on Rule 6c-11. The Exchange further believes that the proposed rule is fully consistent with, and will further, the Commission's goals in adopting Rule 6c-11. As with Investment Company Units and Managed Fund Shares listed under the generic listing standards in NYSE

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important Commission objectives, including establishing a consistent, transparent, and efficient regulatory framework for ETFs and facilitating greater competition and innovation among ETFs." Rule 6c-11 Release, at 57163. The Commission also stated the following regarding the rule's impact: "We believe rule 6c-11 will establish a regulatory framework that: (1) Reduces the expense and delay currently associated with forming and operating certain ETFs unable to rely on existing orders; and (2) creates a level playing field for ETFs that can rely on the rule. As such, the rule will enable increased product competition among certain ETF providers, which can lead to lower fees for investors, encourage financial innovation, and increase investor choice in the ETF market." Rule 6c-11 Release, at 57204.

7 17 CFR 240.19b-4(c)(1). As provided under SEC Rule 19b-4(c)(1), a stated policy, practice, or interpretation of the SRO shall be deemed to be a proposed rule change unless it is reasonably and fairly implied by an existing rule of the SRO.

8 Currently, "passive" ETFs (Investment Company Units) based on an underlying index as well as actively-managed ETFs (Managed Fund Shares) are listed on the Exchange pursuant to NYSE Arca Rules 5.2-E(j)(3) and 8.600-E, respectively, and such securities are eligible for Exchange listing pursuant to Rule 19b-4(e) if they satisfy the "generic" listing criteria specified in those Exchange rules. The Exchange may file with the Commission a proposed rule change pursuant to Rule 19(b) of the Act to permit listing of Investment Company Units and Managed Fund Shares that do not meet the applicable generic listing criteria. Such securities may be listed and traded on the Exchange following Commission approval or notice of effectiveness of the applicable proposed rule change.

Arca Rules 5.2-E(j)(3) and 8.600-E, respectively, series of Exchange-Traded Fund Shares that are permitted to operate in reliance on Rule 6c-11 would be permitted to be listed and traded on the Exchange without a prior Commission approval order or notice of effectiveness pursuant to Section 19(b) of the Act. This will significantly reduce the time frame and costs associated with bringing these securities to market, thereby promoting market competition among issuers of Exchange-Traded Fund Shares, to the benefit of the investing public.

Proposed Rule 5.2-E(j)(8)--Exchange-Traded Fund Shares

The Exchange is proposing standards that would pertain to Exchange-Traded Fund Shares to qualify for listing and trading pursuant to Rule 19b-4(e), as follows.[9]

Proposed Rule 5.2-E(j)(8)(a) would provide that the Exchange would consider for trading, whether by listing or pursuant to unlisted trading privileges ("UTP"), Exchange-Traded Fund Shares that meet the criteria of proposed Rule 5.2-E(j)(8).

Proposed Rule 5.2-E(j)(8)(b) would specify applicability of proposed Rule 5.2-E(j)(8) and would provide that it is applicable only to Exchange-Traded Fund Shares. Proposed Rule 5.2-E(j)(8) (b)would further provide that, except to the extent inconsistent with proposed Rule 5.2-E(j)(8), or unless the context otherwise requires, Exchange rules would be applicable to the trading on the Exchange of such securities and that Exchange-Traded Fund Shares would be included within the definition of NMS Stock as defined in Rule 1.1.

Proposed Rule 5.2-E(j)(8)(c) would set forth the definitions that would be used for purposes of the proposed rule as follows:

- Proposed Rule 5.2-E(j)(8)(c)(1) would define the term "1940 Act" to mean the Investment Company Act of 1940, as amended.

- Proposed Rule 5.2-E(j)(8)(c)(2) would define the term "Exchange-Traded Fund" as having the same meaning as the term "exchange-traded fund" as defined in Rule 6c-11(a)(1) under the 1940 Act.[10]

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9 Rule 6c-11 became effective on December 23, 2019. Subject to approval of this proposed rule change, Exchange-Traded Fund Shares that are permitted to operate in reliance on Rule 6c-11 would be eligible for listing and trading on the Exchange under proposed Rule 5.2-E(j)(8) after that date.

10 Rule 6c-11(a)(1) defines "exchange-traded fund" as a registered open-end management company: (i) That issues (and redeems) creation units to (and from) authorized participants in exchange for a basket and a cash balancing amount if any; and (ii) Whose shares are listed on a national securities exchange and traded at market-determined prices. The terms "authorized participant," "basket" and "creation unit" are defined in Rule 6c-11(a).

- Proposed Rule 5.2-E(j)(8)(c)(3) would define the term “Exchange-Traded Fund Share” to mean a share of stock issued by an Exchange-Traded Fund.[11]

Proposed Rule 5.2-E(j)(8)(c)(4) would define the term "Reporting Authority" to mean, in respect of a particular series of Exchange-Traded Fund Shares, the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Exchange-Traded Fund Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value, the current value of the portfolio of any securities required to be deposited in connection with issuance of Exchange Traded Fund Shares, the amount of any dividend equivalent payment or cash distribution to holders of Exchange-Traded Fund Shares, net asset value, or other information relating to the issuance, redemption or trading of Exchange-Traded Fund Shares. A series of Exchange-Traded Fund Shares may have more than one Reporting Authority, each having different functions.[12]

Proposed Rule 5.2-E(j)(8)(d) would specify the limitations on Exchange liability and relates to limitation of the Exchange, the Reporting Authority, or any agent of the Exchange as a result of specified events and conditions. Specifying such limitations of liability is standard in the Exchange’s rules governing the listing of Derivative Securities Products and the proposed rule text is based on Rules 5.2-E(j)(3)(D), 8.100-E(f), 8.201-E(f), 8.200-E(f), 8.202-E(f), 8.203-E(f), 8.204-E(g), 8.300-E(f), 8.400-E(f), 8.500-E(e), 8.600-E(e), and 8.700-E(g).

Proposed Rule 5.2-E(j)(8)(e) would provide that Exchange may approve Exchange-Traded Fund Shares for listing and/or trading (including pursuant to UTP) pursuant to Rule 19b-4(e) under the Exchange Act provided that each series of Exchange-Traded Fund Shares must be eligible to operate in reliance on Rule 6c-11 under the 1940 Act and, except for subparagraph (1)(A) of Rule 5.2(j)(8) (as described below), must satisfy the requirements of proposed Rule 5.2-E(j)(8) upon initial listing and on a continuing basis. As further proposed, an issuer of such securities must notify the Exchange of any failure to comply with such requirements.

Proposed Rule 5.2-E(j)(8)(e)(1) sets forth the initial and continued listing standards for Exchange-Traded Fund Shares to be listed on the Exchange and would provide that Exchange-Traded Fund Shares will be listed and traded on the

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11 The definition of Exchange-Traded Fund Shares is the same as the definition of “exchange-traded fund shares” in Rule 6c-11(a) under the 1940 Act.

12 Proposed Rule 5.2-E(j)(8)(c)(4) is based, for example, on Rules 8.100-E(a)(2) for Portfolio Depositary Receipts); 8.600-E(c)(4) (for Managed Fund Shares) and 8.700-E(c)(4) (for Managed Trust Securities).

Exchange subject to the requirement that the investment company issuing a series of Exchange-Traded Fund Shares is eligible to operate in reliance on the requirements of Rule 6c-11(c) on an initial and continued listing basis.

Proposed Rule 5.2-E(j)(8)(e)(1)(A) provides that, for each series of Exchange-Traded Fund Shares, the Exchange will establish a minimum number of Exchange-Traded Fund Shares required to be outstanding at the time of commencement of trading on the Exchange.

Proposed Rule 5.2-E(j)(8)(e)(2) would set forth the standards for suspension of trading or removal of Exchange-Traded Fund Shares from listing on the Exchange and would provide that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 5.5-E(m) of, a series of Exchange-Traded Fund Shares under any of the following circumstances:

(i) if the investment company notifies the Exchange or if the Exchange otherwise becomes aware that it is no longer eligible to operate in reliance on Rule 6c-11 or that it does not comply with the requirements set forth in Rule 5.2-E(j)(8) (see proposed Rule 5.2-E(j)(8)(e)(2)(A));

(ii) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Exchange-Traded Fund Shares, there are fewer than 50 beneficial holders of such series of Exchange-Traded Fund Shares (see proposed Rule 5.2-E(j)(8)(e)(2)(B)); or

(iii) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable (see proposed Rule 5.2-E(j)(8)(e)(2)(C)). This proposed rule text is based, for example, on Rules 5.2-E(j)(6)(B)(2)(c)(3)(for Index-Linked Securities); 8.600-E(d)(2)(C)(vi)(for Managed Fund Shares); and 8.700-E(d)(2)(c)(vi)(for Managed Trust Securities).

Proposed Rule 5.2-E(j)(8)(f) would provide that transactions in Exchange-Traded Fund Shares would occur during the trading hours specified in Rule 7.34-E(a). As with other Derivative Securities Products listed on the Exchange, Exchange-Traded Fund Shares would trade during the Early, Core, and Late Trading Sessions, as defined in Rule 7.34-E(a). ETP Holders accepting orders in Exchange-Traded Fund Shares in the Early or Late Trading Session would be subject to the customer disclosure requirements specified in Rule 7.34-E(d).

Proposed Rule 5.2-E(j)(8)(g) would provide that the Exchange would implement written surveillance procedures for Exchange-Traded Fund Shares. This proposed rule is based, for example, on Commentary .01(f) to Rule 5.2-E(j)(3) (for Investment Company Units); Commentary .03 to Rule 8.600-E (for Managed

Fund Shares); and Commentary .04 to Rule 8.700-E (for Managed Trust Securities).

Proposed Rule 5.2-E(j)(8)(h) would provide that, upon termination of an investment company issuing Exchange-Traded Fund Shares, the Exchange requires that Exchange-Traded Fund Shares issued in connection with such entity be removed from Exchange listing.

Proposed Rule 5.2-E(j)(8)(i) would provide that the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in a series of Exchange-Traded Fund Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which certain information about the Exchange-Traded Fund Shares that is required to be disclosed under Rule 6c-11(c) of the 1940 Act is not being made available; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. [13]

Proposed Commentary .01 to Rule 5.2-E(j)(8) would provide that a security that has previously been approved for listing on the Exchange pursuant to the generic listing requirements specified in Rule 5.2-E(j)(3) or Commentary .01 to Rule 8.600-E, or pursuant to a proposed rule change approved or subject to a notice of effectiveness by the Commission, may be considered approved for listing solely under Rule 5.2-E(j)(8) if such security is eligible to operate in reliance on Rule 6c-11 under the 1940 Act. Once so approved for listing, the continued listing requirements applicable to such previously-listed security will be those specified in paragraph (e) of Rule 5.2-E(j)(8). Any requirements for listing as specified in Rule 5.2-E(j)(3) or Commentary .01 to Rule 8.600-E, or an approval order or notice of effectiveness of a separate proposed rule change that differ from the requirements of Rule 5.2-E(j)(8) will no longer be applicable to such security.

The Exchange believes that proposed Commentary .01 harmonizes the Exchange's listing standards for all Exchange-Traded Funds that will be listed on the Exchange, even if they were previously listed pursuant to different continued listing requirements. Specifically, as noted in the Rule 6c-11 Release, one year following the effective date of Rule 6c-11, the Commission will be rescinding those portions of its prior ETF exemptive orders under the 1940 Act that grant relief related to the formation and operation of certain ETFs. The Exchange believes that once this occurs, all Exchange-Traded Funds will be subject to the same requirements under Rule 6c-11 and will no longer be subject to any differing requirements that may have been set forth in the exemptive orders issued before the effective date of Rule 6c-11. The Exchange therefore believes that any such Exchange-Traded Funds that were previously-listed on the Exchange under a

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[13] The Exchange will propose applicable NYSE Arca listing fees for Exchange-Traded Fund Shares in the NYSE Arca Equities Schedule of Fees and Charges in a separate proposed rule change.

different standard should be deemed approved for listing on the Exchange under proposed Rule 5.2-E(j)(8). To maintain consistent standards for all Exchange-Traded Fund Shares on the Exchange, the Exchange further believes that such previously-listed products should no longer be required to comply with the previously-applicable continued listing requirements for such Exchange-Traded Funds.

Proposed Commentary .02 to Rule 5.2-E(j)(8) would provide that the following requirements shall be met by series of Exchange-Traded Fund Shares on an initial and continued listing basis. With respect to series of Exchange-Traded Fund Shares that are based on an index: (1) If the underlying index is maintained by a broker-dealer or fund adviser, the broker-dealer or fund adviser will erect and maintain a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index will be calculated by a third party who is not a broker-dealer or fund adviser. (2) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index. See proposed Commentary .02 (a) to Rule 5.2-E(j)(8)).

In addition, with respect to series of Exchange-Traded Fund Shares that are actively managed, if the investment adviser to the investment company issuing Exchange-Traded Fund Shares is affiliated with a broker-dealer, such investment adviser will erect and maintain 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 Exchange-Traded Fund’s portfolio. Personnel who make decisions on the Exchange-Traded Fund’s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Exchange-Traded Fund portfolio. The Reporting Authority that provides information relating to the portfolio of a series of Exchange-Traded Fund Shares must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of such portfolio. (See proposed Commentary .02(b) to Rule 5.2-E(j)(8)).

The Exchange also proposes non-substantive amendments to include Exchange-Traded Fund Shares in other Exchange rules. Specifically, the Exchange proposes to amend Rule 5.3-E, concerning Corporate Governance and Disclosure Policies, and Rule 5.3-E(e), concerning Shareholder/Annual Meetings, to add Exchange-Traded Fund Shares to the enumerated derivative and special purpose securities that are subject to the respective Rules. Thus, Exchange-Traded Fund Shares would be subject to corporate governance, disclosure and shareholder/annual meeting requirements that are consistent with other derivative and special purpose securities enumerated in those Rules.

The Exchange believes that proposed Rule 5.2-E(j)(8) would promote transparency surrounding the listing process for Exchange-Traded Fund Shares.

The Exchange notes that Exchange-Traded Fund Shares will be subject to all Exchange rules applicable to equities trading and that Rule 6c-11 does not change the Exchange rules applicable to these securities.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in a series of Exchange-Traded Fund Shares.[14] Trading in Exchange-Traded Fund Shares will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12-E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in Exchange-Traded Fund Shares inadvisable.

NYSE Arca Rule 7.18-E(d)(2) provides that, with respect to Derivative Securities Products (which would include Exchange-Traded Fund Shares) listed on the Exchange for which a Net Asset Value ("NAV") is disseminated, if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading in the affected Derivative Securities Product on the NYSE Arca Marketplace until such time as the NAV is available to all market participants.

Minimum Price Variation

As provided in NYSE Arca Rule 7.6-E, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Exchange-Traded Fund Shares in all trading sessions and to deter and detect violations of Exchange rules. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which are currently applicable to Investment Company Units and Managed Fund Shares, among other product types, to monitor trading in Exchange-Traded Fund Shares. The Exchange or the Financial Industry Regulatory Authority, Inc. (“FINRA”), on behalf of the Exchange, will communicate as needed regarding trading in Exchange-Traded Fund Shares and certain of their applicable underlying components with other markets that are members of the Intermarket Surveillance Group (“ISG”) or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange may obtain information regarding trading in Exchange-

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[14] See NYSE Arca Rule 7.12-E.

Traded Fund Shares and certain of their applicable underlying components from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Additionally, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities that may be held by a series of Exchange-Traded Fund Shares reported to FINRA's TRACE. FINRA also can access data obtained from the Municipal Securities Rulemaking Board's Electronic Municipal Market Access ("EMMA") system relating to municipal bond trading activity for surveillance purposes in connection with trading in a series of Exchange-Traded Fund Shares, to the extent that a series of Exchange-Traded Fund Shares holds municipal securities. As noted above, the issuer of a series of Exchange-Traded Fund Shares will be required to comply with Rule 10A-3 under the Act for the initial and continued listing of Exchange-Traded Fund Shares, as provided under Rule 5.3-E.

Pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. As provided for under proposed Rule 5.2-E(j)(8)(e)(2), if the fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Rule 5.5-E(m).

The Exchange will utilize its existing procedures to monitor issuer compliance with the requirements of proposed Rule 5.2-E(j)(8). For example, the Exchange will continue to use intraday alerts that will notify Exchange personnel of trading activity throughout the day that may indicate that certain disclosures are not being made accurately or that other unusual conditions or circumstances are present that could be detrimental to the maintenance of a fair and orderly market. The Exchange will require periodic certification from the issuer of a series of Exchange-Traded Fund Shares that it is in compliance with Rule 6c-11. In addition, the Exchange will periodically review issuer websites to monitor whether disclosures are being made for a series of Exchange-Traded Fund Shares as required by Rule 6c-11(c)(1). The Exchange also notes that proposed Rule 5.2-E(j)(8)(e) would require an issuer of Exchange-Traded Fund Shares to notify the Exchange that it is no longer eligible to operate in reliance on Rule 6c-11 or that it does not comply with the requirements of proposed Rule 5.2-E(j)(8). The Exchange will rely on the foregoing procedures to become aware of any non-compliance with the requirements of Rule 5.2-E(j)(8).

Firewalls

Commentary .01(b)(1) and Commentary .02(b) to NYSE Arca Rule 5.2-E (j)(3) (applicable to Investment Company Units) and Commentary .06 to NYSE Arca Rule 8.600-E (applicable to Managed Fund Shares) require the establishment and maintenance of a "firewall" around personnel who have access to information concerning changes to an index or the composition and/or changes to a fund's portfolio; and that specified persons or entities be subject to procedures designed

to prevent the use and dissemination of material non-public information regarding the applicable index or portfolio.

In the Rule 6c-11 Release, the Commission, in the context of index-based ETFs with affiliated index providers ("self-indexed ETFs"), noted the federal securities law provisions that currently relate to implementation by funds of appropriate measures to deal with misuse of non-public information.[15] The Exchange notes that these federal securities laws requirements will continue to apply to issues of index and actively-managed ETFs and the proposed generic listing rules for Exchange-Traded Fund Shares are consistent with such requirements. The Exchange notes that proposed Commentary .02(a) to Rule 5.2-E(j)(8) provides that, with respect to series of Exchange-Traded Fund Shares that are based on an index, if the underlying index is maintained by a broker-dealer or fund adviser, the broker-dealer or fund adviser will erect and maintain a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer or fund advisor. In addition, proposed Commentary .02(b) provides that, with respect to series of Exchange-Traded Fund Shares that are actively managed, if the investment adviser to the Exchange-Traded Fund issuing Exchange-Traded Fund Shares is affiliated with a broker-dealer, such investment adviser will erect and maintain 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 Exchange-Traded Fund portfolio.

In support of this proposal, the Exchange represents that:

(1) the Exchange-Traded Fund Shares will conform to the initial and continued listing criteria under Rule 5.2-E(j)(8);

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15 See Rule 6c-11 Release at 57168-57169. See also, 17 CFR 270.38a-1 (rule 38a-1 under the 1940 Act) (requiring funds to adopt policies and procedures reasonably designed to prevent violation of federal securities laws); 17 CFR 270.17j-1(c)(1) (rule 17j-1(c)(1) under the Investment Company Act) (requiring funds to adopt a code of ethics containing provisions designed to prevent certain fund personnel ("access persons") from misusing information regarding fund transactions); section 204A of the Investment Advisers Act of 1940 ("Advisers Act") (15 U.S.C. 80b-204A) (requiring an adviser to adopt policies and procedures that are reasonably designed, taking into account the nature of its business, to prevent the misuse of material, non-public information by the adviser or any associated person, in violation of the Advisers Act or the Exchange Act, or the rules or regulations thereunder); section 15(g) of the Exchange Act (15 U.S.C. 78o(f)) (requiring a registered broker or dealer to adopt policies and procedures reasonably designed, taking into account the nature of the broker's or dealer's business, to prevent the misuse of material, nonpublic information by the broker or dealer or any person associated with the broker or dealer, in violation of the Exchange Act or the rules or regulations thereunder).

(2) the Exchange's surveillance procedures are adequate to properly monitor the trading of the Exchange-Traded Fund Shares in all trading sessions and to deter and detect violations of Exchange rules. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which will include Exchange-Traded Fund Shares, to monitor trading in the Exchange-Traded Fund Shares;

(3) the issuer of a series of Exchange-Traded Fund Shares will be required to comply with Rule 10A-3 under the Act for the initial and continued listing of Exchange-Traded Fund Shares, as provided under Rule 5.3-E; and

(4) Exchange-Traded Fund Shares will be subject to all Exchange rules applicable to equities trading.

Proposed Discontinuance of Quarterly Reporting Obligation for Managed Fund Shares

In its order approving the Exchange's proposal to adopt generic listing standards for Managed Fund Shares,[16] the Commission noted that the Exchange has represented that it would "provide the Commission staff with a report each calendar quarter that includes the following information for issues of Managed Fund Shares listed during such calendar quarter under Commentary .01 to NYSE Arca Rule 8.600-E: (1) trading symbol and date of listing on the Exchange; (2) the number of active authorized participants and a description of any failure of an issue of Managed Fund Shares listed pursuant to Commentary .01 to Rule 8.600-E or of an authorized participant to deliver shares, cash, or cash and financial instruments in connection with creation or redemption orders; and (3) a description of any failure of an issue of Managed Fund Shares to comply with Rule 8.600-E."[17] The Exchange has provided such information to the Commission on a quarterly basis for two years. The requirement to provide such quarterly reports for Managed Fund Shares is not separately specified in Rule 8.600-E, and Investment Company Units listed under Rule 5.2-E(j)(3) have not been subject to a similar requirement.

The generic listing criteria in proposed Rule 5.2-E(j)(8) will now apply equally both to Exchange-Traded Fund Shares that are Investment Company Units previously listed under Rule 5.2-E(j)(3) and those that are Managed Fund Shares previously listed under Commentary .01 to Rule 8.600-E. All types of Exchange-Traded Fund Shares, whether index-based or actively managed, must be eligible

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16 See Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (the "Managed Fund Shares Approval Order").

17 See Managed Fund Shares Approval Order at footnote 18.

to operate in reliance on Rule 6c-11.[18] The Exchange believes no purpose would be served by continuing to require quarterly reports for one class of ETFs and not another when both would be subject to the same Exchange generic listing rules. The Exchange, therefore, proposes to discontinue such reporting going forward.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Section 6(b)(5) of the Act,[20] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

By facilitating efficient procedures for listing ETFs that are permitted to operate in reliance on Rule 6c-11, the generic listing rules in proposed Rule 5.2-E(j)(8) described above are consistent with, and will further, the Commission's goals in adopting Rule 6c-11. In addition, by allowing Exchange-Traded Fund Shares to be listed and traded on the Exchange without a prior Commission approval order or notice of effectiveness pursuant to Section 19(b) of the Act, proposed Rule 5.2-E(j)(8) will significantly reduce the time frame and costs associated with bringing these securities to market, thereby promoting market competition among issuers of Exchange-Traded Fund Shares, to the benefit of the investing public.

In addition, the proposed rule change would fulfill the intended objective of Rule 19b-4(e) under the Act by permitting Exchange-Traded Fund Shares that satisfy the proposed listing standards to be listed and traded without separate

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18 The Exchange notes that Rule 6c-11(d) sets forth recordkeeping requirements applicable to exchange-traded funds, and provides that that the exchange-traded fund must maintain and preserve for a period of not less than five years, the first two years in an easily accessible place: (1) All written agreements (or copies thereof) between an authorized participant and the exchange-traded fund or one of its service providers that allows the authorized participant to place orders for the purchase or redemption of creation units; (2) For each basket exchanged with an authorized participant, records setting forth: (i) The ticker symbol, CUSIP or other identifier, description of holding, quantity of each holding, and percentage weight of each holding composing the basket exchanged for creation units; (ii) If applicable, identification of the basket as a custom basket and a record stating that the custom basket complies with policies and procedures that the exchange-traded fund adopted pursuant to paragraph (c)(3) of Rule 6c-11; (iii) Cash balancing amount (if any); and (iv) Identity of authorized participant transacting with the exchange-traded fund.

19 15 U.S.C. 78f(b).

20 15 U.S.C. 78f(b)(5).

Commission approval.

As provided in proposed Rule 5.2-E(j)(8)(e), the Exchange may approve Exchange-Traded Fund Shares for listing and trading on the Exchange subject to the requirement that the investment company issuing a series of Exchange-Traded Fund Shares is eligible to operate in reliance on Rule 6c-11[21] under the 1940 Act and must satisfy the requirements of Rule 5.2-E(j)(8) on an initial listing and a continuing basis. An issuer of such securities must notify the Exchange of any failure to comply with such requirements. These requirements will ensure that Exchange-listed Exchange-Traded Fund Shares continue to operate in a manner that fully complies with the portfolio transparency requirements of Rule 6c-11(c).

As provided in proposed Rule 5.2-E(j)(8)(e)(1), Exchange-Traded Fund Shares will be listed and traded on the Exchange subject to the requirement that the investment company issuing a series of Exchange-Traded Fund Shares is eligible to operate in reliance on the requirements of Rule 6c-11(c) under the 1940 Act on an initial and continued listing basis.

As provided in proposed Rule 5.2-E(j)(8)(e)(2) (Suspension of trading or removal), the Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 5.5-E(m) of, a series of Exchange-Traded Fund Shares if the investment company notifies the Exchange or if the Exchange otherwise becomes aware that is no longer eligible to operate in reliance on Rule 6c-11 or that it does not comply with the requirements set forth in Rule 5.2-E(j)(8); if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Exchange-Traded Fund Shares, there are fewer than 50 beneficial holders of such series of Exchange-Traded Fund Shares; or if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

As provided in proposed Rule 5.2-E(j)(8)(g), the Exchange will implement written surveillance procedures for Exchange-Traded Fund Shares. The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Exchange-Traded Fund Shares in all trading sessions and to deter and detect violations of Exchange rules. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which will include Exchange-Traded Fund Shares, to monitor trading in the Exchange-Traded Fund Shares.

Proposed Rule 5.2-E(j)(8)(h) provides that, upon termination of an investment company issuing Exchange-Traded Fund Shares, the Exchange requires that Exchange-Traded Fund Shares issued in connection with such entity be removed from Exchange listing. Proposed Rule 5.2-E(j)(8)(i) provides that the Exchange

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[21] Rule 6c-11(c) sets forth certain conditions applicable to exchange-traded funds, including information required to be disclosed on the fund's website.

may consider all relevant factors in exercising its discretion to halt or suspend trading in a series of Exchange-Traded Fund Shares, and that trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

Proposed Commentary .01 to Rule 5.2-E(j)(8) provides that a security that has previously been approved for listing on the Exchange pursuant to the generic listing requirements specified in Rule 5.2-E(j)(3) or Commentary .01 to Rule 8.600-E, or pursuant to a proposed rule change approved or subject to a notice of effectiveness by the Commission, may be considered approved for listing solely under Rule 5.2-E(j)(8) if such security is eligible to operate in reliance on Rule 6c-11 under the 1940 Act. Once so approved for listing, the continued listing requirements applicable to such previously-listed security will be those specified in paragraph (e) of Rule 5.2-E(j)(8). Any requirements for listing as specified in Rule 5.2-E(j)(3) or Commentary .01 to Rule 8.600-E, or an approval order or notice of effectiveness of a separate proposed rule change that differ from the requirements of Rule 5.2-E(j)(8) will no longer be applicable to such security. The Exchange believes proposed Commentary .01 will streamline the listing process for such securities, consistent with the regulatory framework adopted in Rule 6c-11 under the 1940 Act.

Proposed Commentary .02 to Rule 5.2-E(j)(8) would provide requirements to be met by shall be met on an initial and continued listing basis by series of Exchange-Traded Fund Shares that are based on an index or are actively managed regarding the erection and maintenance of a “fire wall” as well as implementation and maintenance of procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index or portfolio. The Exchange believes the provisions of Commentary .02 will address possible concerns regarding misuse of material non-public information regarding an index underlying a series of Exchange-Traded Fund Shares or the portfolio for a series of Exchange-Traded Fund Shares, as applicable.

The proposed addition of Exchange-Traded Fund Shares to the enumerated derivative and special purpose securities that are subject to the provisions of Rule 5.3-E (Corporate Governance and Disclosure Policies) and Rule 5.3-E (e) (Shareholder/Annual Meetings) would subject Exchange-Traded Fund Shares to the same requirements currently applicable to other 1940 Act-registered investment company securities (i.e., Investment Company Units, Managed Fund Shares and Portfolio Depositary Receipts).

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Exchange-Traded Fund Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, will communicate as needed regarding trading in Exchange-Traded Fund Shares with other markets that are members of ISG, including all U.S. securities exchanges on which the

components are traded. In addition, the Exchange may obtain information regarding trading in Exchange-Traded Fund Shares from other markets that are members of the ISG, including all U.S. securities exchanges on which the components are traded, or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which are currently applicable to Investment Company Units and Managed Fund Shares, among other product types, to monitor trading in Exchange-Traded Fund Shares. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in Exchange-Traded Fund Shares and certain of their applicable underlying components with other markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange may obtain information regarding trading in Exchange-Traded Fund Shares and certain of their applicable underlying components from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Additionally, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities that may be held by a series of Exchange-Traded Fund Shares reported to FINRA's TRACE. FINRA also can access data obtained from the Municipal Securities Rulemaking Board's EMMA system relating to municipal bond trading activity for surveillance purposes in connection with trading in a series of Exchange-Traded Fund Shares, to the extent that a series of Exchange-Traded Fund Shares holds municipal securities. As noted above, the issuer of a series of Exchange-Traded Fund Shares will be required to comply with Rule 10A-3 under the Act for the initial and continued listing of Exchange-Traded Fund Shares, as provided under Rule 5.3-E.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in a series of Exchange-Traded Fund Shares.[22] Trading in Exchange-Traded Fund Shares will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12-E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in Exchange-Traded Fund Shares inadvisable. NYSE Arca Rule 7.18-E(d)(2) provides that, with respect to Derivative Securities Products (which would include Exchange-Traded Fund Shares) listed on the Exchange for which an NAV is disseminated, if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading in the affected Derivative Securities Product on the NYSE Arca Marketplace until such time as the NAV is available to all market participants.

The Exchange will monitor for compliance with the continued listing requirements. If the Exchange-Traded Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures

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[22] See NYSE Arca Rule 7.12-E.

under Rule 5.5-E(m).

The Exchange will also continue to use intraday alerts that will notify Exchange personnel of trading activity throughout the day that may indicate that certain disclosures are not being made accurately or that other unusual conditions or circumstances are present that could be detrimental to the maintenance of a fair and orderly market. In addition, the Exchange, on a periodic basis will review issues of Exchange-Traded Fund Shares listed on the Exchange for compliance with the website disclosure requirements of Rule 6c-11(c)(1). Proposed Rule 5.2-E(j)(8)(e) would require an issuer of Exchange-Traded Fund Shares to notify the Exchange if it is no longer eligible to operate in reliance on Rule 6c-11 or that it does not comply with the requirements of proposed Rule 5.2-E(j)(8) (except for subparagraph (1)(A) of Rule 5.2-E(j)(8)(e)).

With respect to the proposed discontinuance of quarterly reports currently required for Managed Fund Shares, the Exchange believes such quarterly reports are no longer necessary in view of the requirements of Rule 6c-11(d). The generic listing criteria in proposed Rule 5.2-E(j)(8) will now apply equally both to Exchange-Traded Fund Shares that are Investment Company Units previously listed under Rule 5.2-E(j)(3) and those that are Managed Fund Shares previously listed under Commentary .01 to Rule 8.600-E. All types of Exchange-Traded Fund Shares, whether index-based or actively managed, must be eligible to operate in reliance on Rule 6c-11.[23] The Exchange believes no purpose would be served by continuing to require quarterly reports for one class of ETFs and not another when both would be subject to the same Exchange generic listing rules. The Exchange, therefore, proposes to discontinue such reporting going forward.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

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

In accordance with Section 6(b)(8) of the Act,[24] 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. Instead, the Exchange believes that the proposed rule change would facilitate the listing and trading of Exchange-Traded Fund Shares and result in an efficient process surrounding the listing and trading of Exchange-Traded Fund Shares, which will enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange believes that this will reduce the time frame for bringing Exchange-Traded Fund Shares to market, thereby reducing the burdens on issuers and other market participants and promoting competition. In turn, the Exchange believes that the proposed change would make the process for listing

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23 See note 18, supra.

24 15 U.S.C. 78f(b)(8).

Exchange-Traded Fund Shares more competitive by applying uniform listing standards with respect to Exchange-Traded Fund Shares.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

6. Extension of Time Period for Commission Action

The Exchange does not consent at this time to an extension of the time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Publication in the Federal Register

Exhibit 4 - Marked changes to Exhibit 5 of the original filing

Exhibit 5 – Text of the Proposed Rule Change

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NYSEARCA-2019-81, Amendment No. 1)

[Date]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to New Rule 5.2-E(j)(8) to Establish Generic Listing Standards for Derivative Securities Products that are Permitted to Operate in Reliance on Rule 6c-11 under the Investment Company Act of 1940

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 February 12, 2020, NYSE Arca, Inc. ("NYSE Arca" 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

The Exchange proposes new Rule 5.2-E(j)(8) to establish generic listing standards for Derivative Securities Products that are permitted to operate in reliance on Rule 6c-11 under the Investment Company Act of 1940. In addition, the Exchange proposes to discontinue the quarterly reports currently required with respect to Managed Fund Shares listed on the Exchange pursuant to Commentary .01 to NYSE Arca Rule 8.600-E. This Amendment No. 1 to SR-NYSEArca-2019-81 replaces SR-NYSEArca-2019-81 as

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

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

originally filed and supersedes such filing in its entirety. The proposed 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 new Rule 5.2-E(j)(8) to establish "generic" listing standards for Exchange-Traded Fund Shares, which are Derivative Securities Products[4] that are permitted to operate in reliance on Rule 6c-11 ("Rule 6c-11") under the Investment Company Act of 1940 ("1940 Act").[5] In addition, the Exchange proposes to discontinue the quarterly reports currently required with respect to Managed Fund Shares

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[4] The term "Derivative Securities Product" is defined in Rule 1.1(k) to mean a security that meets the definition of "derivative securities product" in Rule 19b-4(e) under the Exchange Act. 17 CFR 240.19b-4(e). As provided under Rule 19b-4(e), the term "new derivative securities product" means any type of option, warrant, hybrid securities product or any other security, other than a single equity option or a security futures product, whose value is based, in whole or in part, upon the performance of, or interest in, an underlying instrument. The term "Exchange Act" is defined in Rule 1.1(q) to mean the Securities Exchange Act of 1934, as amended.

[5] 15 U.S.C. 80a-1.

listed on the Exchange pursuant to Rule Commentary .01 to Rule 8.600-E.

The Exchange currently lists and trades shares of exchange-traded funds ("ETFs") under the generic listing criteria of NYSE Arca Rule 5.2(j)(3) for Investment Company Units or Commentary .01 to NYSE Arca Rule 8.600-E for Managed Fund Shares, or pursuant to a Securities and Exchange Commission ("Commission") approval order or notice of effectiveness under Section 19(b)(2) or Section 19(b)(3)(A), respectively, of the Act. Issuers of Investment Company Units and Managed Fund Shares have heretofore been required to submit an application for exemptive relief from certain provisions under the 1940 Act and to receive such relief pursuant to an exemptive order by the Commission. The Commission recently adopted Rule 6c-11 to permit ETFs that satisfy certain conditions to operate without obtaining an exemptive order from the Commission under the 1940 Act.[6] The regulatory framework provided in Rule 6c-11, therefore, will streamline current procedures and reduce the costs and time frames associated with bringing ETFs to market, thereby enhancing competition among ETF issuers and reducing costs for investors.[7]

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[6] See Release Nos. 33-10695; IC-33646; File No. S7-15-18 (Exchange-Traded Funds) (September 25, 2019), 84 FR 57162 (October 24, 2019) (the "Rule 6c-11 Release").

[7] In approving the rule, the Commission stated that the "rule will modernize the regulatory framework for ETFs to reflect our more than two decades of experience with these investment products. The rule is designed to further important Commission objectives, including establishing a consistent, transparent, and efficient regulatory framework for ETFs and facilitating greater competition and innovation among ETFs." Rule 6c-11 Release, at 57163. The Commission also stated the following regarding the rule's impact: "We believe rule 6c-11 will establish a regulatory framework that: (1) Reduces the expense and delay currently associated with forming and operating certain ETFs unable to rely on existing orders; and (2) creates a level playing field for ETFs that can rely on the rule. As such, the rule will enable increased product competition among certain ETF providers, which can lead to lower fees for investors, encourage financial

Rule 19b-4(e)(1) provides that the listing and trading of a new derivative securities product by a self-regulatory organization ("SRO") is not deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4,[8] if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the SRO has a surveillance program for the product class.[9] As contemplated by this Rule, the Exchange proposes new Rule 5.2-E(j)(8) to establish generic listing standards for ETFs that are permitted to operate in reliance on Rule 6c-11. An ETF listed under proposed Rule 5.2-E(j)(8) would therefore not need a separate proposed rule change pursuant to Rule 19b-4 before it can be listed and traded on the Exchange.

The Exchange believes that the proposed generic listing rules for Exchange-Traded Fund Shares, described below, would facilitate efficient procedures for ETFs that are permitted to operate in reliance on Rule 6c-11. The Exchange further believes that the proposed rule is fully consistent with, and will further, the Commission's goals in

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innovation, and increase investor choice in the ETF market." Rule 6c-11 Release, at 57204.

8 17 CFR 240.19b-4(c)(1). As provided under SEC Rule 19b-4(c)(1), a stated policy, practice, or interpretation of the SRO shall be deemed to be a proposed rule change unless it is reasonably and fairly implied by an existing rule of the SRO.

9 Currently, "passive" ETFs (Investment Company Units) based on an underlying index as well as actively-managed ETFs (Managed Fund Shares) are listed on the Exchange pursuant to NYSE Arca Rules 5.2-E(j)(3) and 8.600-E, respectively, and such securities are eligible for Exchange listing pursuant to Rule 19b-4(e) if they satisfy the "generic" listing criteria specified in those Exchange rules. The Exchange may file with the Commission a proposed rule change pursuant to Rule 19(b) of the Act to permit listing of Investment Company Units and Managed Fund Shares that do not meet the applicable generic listing criteria. Such securities may be listed and traded on the Exchange following Commission approval or notice of effectiveness of the applicable proposed rule change.

adopting Rule 6c-11. As with Investment Company Units and Managed Fund Shares listed under the generic listing standards in NYSE Arca Rules 5.2-E(j)(3) and 8.600-E, respectively, series of Exchange-Traded Fund Shares that are permitted to operate in reliance on Rule 6c-11 would be permitted to be listed and traded on the Exchange without a prior Commission approval order or notice of effectiveness pursuant to Section 19(b) of the Act. This will significantly reduce the time frame and costs associated with bringing these securities to market, thereby promoting market competition among issuers of Exchange-Traded Fund Shares, to the benefit of the investing public.

Proposed Rule 5.2-E(j)(8)--Exchange-Traded Fund Shares

The Exchange is proposing standards that would pertain to Exchange-Traded Fund Shares to qualify for listing and trading pursuant to Rule 19b-4(e), as follows.[10]

Proposed Rule 5.2-E(j)(8)(a) would provide that the Exchange would consider for trading, whether by listing or pursuant to unlisted trading privileges ("UTP"), Exchange-Traded Fund Shares that meet the criteria of proposed Rule 5.2-E(j)(8).

Proposed Rule 5.2-E(j)(8)(b) would specify applicability of proposed Rule 5.2-E(j)(8) and would provide that it is applicable only to Exchange-Traded Fund Shares. Proposed Rule 5.2-E(j)(8) (b)would further provide that, except to the extent inconsistent with proposed Rule 5.2-E(j)(8), or unless the context otherwise requires, Exchange rules would be applicable to the trading on the Exchange of such securities and that Exchange-Traded Fund Shares would be included within the definition of NMS Stock as defined in Rule 1.1.

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[10] Rule 6c-11 became effective on December 23, 2019. Subject to approval of this proposed rule change, Exchange-Traded Fund Shares that are permitted to operate in reliance on Rule 6c-11 would be eligible for listing and trading on the Exchange under proposed Rule 5.2-E(j)(8) after that date.

Proposed Rule 5.2-E(j)(8)(c) would set forth the definitions that would be used for purposes of the proposed rule as follows:

- Proposed Rule 5.2-E(j)(8)(c)(1) would define the term “1940 Act” to mean the Investment Company Act of 1940, as amended.
- Proposed Rule 5.2-E(j)(8)(c)(2) would define the term “Exchange-Traded Fund” as having the same meaning as the term “exchange-traded fund” as defined in Rule 6c-11(a)(1) under the 1940 Act.[11]
- Proposed Rule 5.2-E(j)(8)(c)(3) would define the term “Exchange-Traded Fund Share” to mean a share of stock issued by an Exchange-Traded Fund.[12]

Proposed Rule 5.2-E(j)(8)(c)(4) would define the term "Reporting Authority" to mean, in respect of a particular series of Exchange-Traded Fund Shares, the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Exchange-Traded Fund Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value, the current value of the portfolio of any securities required to be deposited in connection with issuance of Exchange Traded Fund Shares, the amount of any

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[11] Rule 6c-11(a)(1) defines “exchange-traded fund” as a registered open-end management company: (i) That issues (and redeems) creation units to (and from) authorized participants in exchange for a basket and a cash balancing amount if any; and (ii) Whose shares are listed on a national securities exchange and traded at market-determined prices. The terms “authorized participant,” “basket” and “creation unit” are defined in Rule 6c-11(a).

[12] The definition of Exchange-Traded Fund Shares is the same as the definition of “exchange-traded fund shares” in Rule 6c-11(a) under the 1940 Act.

dividend equivalent payment or cash distribution to holders of Exchange-Traded Fund Shares, net asset value, or other information relating to the issuance, redemption or trading of Exchange-Traded Fund Shares. A series of Exchange-Traded Fund Shares may have more than one Reporting Authority, each having different functions.[13]

Proposed Rule 5.2-E(j)(8)(d) would specify the limitations on Exchange liability and relates to limitation of the Exchange, the Reporting Authority, or any agent of the Exchange as a result of specified events and conditions. Specifying such limitations of liability is standard in the Exchange's rules governing the listing of Derivative Securities Products and the proposed rule text is based on Rules 5.2-E(j)(3)(D), 8.100-E(f), 8.201-E(f), 8.200-E(f), 8.202-E(f), 8.203-E(f), 8.204-E(g), 8.300-E(f), 8.400-E(f), 8.500-E(e), 8.600-E(e), and 8.700-E(g).

Proposed Rule 5.2-E(j)(8)(e) would provide that Exchange may approve Exchange-Traded Fund Shares for listing and/or trading (including pursuant to UTP) pursuant to Rule 19b-4(e) under the Exchange Act provided that each series of Exchange-Traded Fund Shares must be eligible to operate in reliance on Rule 6c-11 under the 1940 Act and, except for subparagraph (1)(A) of Rule 5.2(j)(8)(e) (as described below), must satisfy the requirements of proposed Rule 5.2-E(j)(8) upon initial listing and on a continuing basis. As further proposed, an issuer of such securities must notify the Exchange of any failure to comply with such requirements.

Proposed Rule 5.2-E(j)(8)(e)(1) sets forth the initial and continued listing standards for Exchange-Traded Fund Shares to be listed on the Exchange and would

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[13] Proposed Rule 5.2-E(j)(8)(c)(4) is based, for example, on Rules 8.100-E(a)(2) for Portfolio Depositary Receipts); 8.600-E(c)(4) (for Managed Fund Shares) and 8.700-E(c)(4) (for Managed Trust Securities).

provide that Exchange-Traded Fund Shares will be listed and traded on the Exchange subject to the requirement that the investment company issuing a series of Exchange-Traded Fund Shares is eligible to operate in reliance on the requirements of Rule 6c-11(c) on an initial and continued listing basis.

Proposed Rule 5.2-E(j)(8)(e)(1)(A) provides that, for each series of Exchange-Traded Fund Shares, the Exchange will establish a minimum number of Exchange-Traded Fund Shares required to be outstanding at the time of commencement of trading on the Exchange.

Proposed Rule 5.2-E(j)(8)(e)(2) would set forth the standards for suspension of trading or removal of Exchange-Traded Fund Shares from listing on the Exchange and would provide that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 5.5-E(m) of, a series of Exchange-Traded Fund Shares under any of the following circumstances:

(i) if the investment company notifies the Exchange or if the Exchange otherwise becomes aware that it is no longer eligible to operate in reliance on Rule 6c-11 or that it does not comply with the requirements set forth in Rule 5.2-E(j)(8) (see proposed Rule 5.2-E(j)(8)(e)(2)(A));

(ii) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Exchange-Traded Fund Shares, there are fewer than 50 beneficial holders of such series of Exchange-Traded Fund Shares (see proposed Rule 5.2-E(j)(8)(e)(2)(B)); or

(iii) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable (see proposed Rule 5.2-E(j)(8)(e)(2)(C)). This proposed rule text is based, for example, on Rules 5.2-E(j)(6)(B)(2)(c)(3)(for Index-Linked Securities); 8.600-E(d)(2)(C)(vi)(for Managed Fund Shares); and 8.700-E(d)(2)(c)(vi)(for Managed Trust Securities).

Proposed Rule 5.2-E(j)(8)(f) would provide that transactions in Exchange-Traded Fund Shares would occur during the trading hours specified in Rule 7.34-E(a). As with other Derivative Securities Products listed on the Exchange, Exchange-Traded Fund Shares would trade during the Early, Core, and Late Trading Sessions, as defined in Rule 7.34-E(a). ETP Holders accepting orders in Exchange-Traded Fund Shares in the Early or Late Trading Session would be subject to the customer disclosure requirements specified in Rule 7.34-E(d).

Proposed Rule 5.2-E(j)(8)(g) would provide that the Exchange would implement written surveillance procedures for Exchange-Traded Fund Shares. This proposed rule is based, for example, on Commentary .01(f) to Rule 5.2-E(j)(3) (for Investment Company Units); Commentary .03 to Rule 8.600-E (for Managed Fund Shares); and Commentary .04 to Rule 8.700-E (for Managed Trust Securities).

Proposed Rule 5.2-E(j)(8)(h) would provide that, upon termination of an investment company issuing Exchange-Traded Fund Shares, the Exchange requires that Exchange-Traded Fund Shares issued in connection with such entity be removed from Exchange listing.

Proposed Rule 5.2-E(j)(8)(i) would provide that the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in a series of Exchange-Traded Fund Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which certain information about the Exchange-Traded Fund Shares that is required to be disclosed under Rule 6c-11(c) of the 1940 Act is not being made available; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. [14]

Proposed Commentary .01 to Rule 5.2-E(j)(8) would provide that a security that has previously been approved for listing on the Exchange pursuant to the generic listing requirements specified in Rule 5.2-E(j)(3) or Commentary .01 to Rule 8.600-E, or pursuant to a proposed rule change approved or subject to a notice of effectiveness by the Commission, may be considered approved for listing solely under Rule 5.2-E(j)(8) if such security is eligible to operate in reliance on Rule 6c-11 under the 1940 Act. Once so approved for listing, the continued listing requirements applicable to such previously-listed security will be those specified in paragraph (e) of Rule 5.2-E(j)(8). Any requirements for listing as specified in Rule 5.2-E(j)(3) or Commentary .01 to Rule 8.600-E, or an approval order or notice of effectiveness of a separate proposed rule change that differ from the requirements of Rule 5.2-E(j)(8) will no longer be applicable to such security.

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[14] The Exchange will propose applicable NYSE Arca listing fees for Exchange-Traded Fund Shares in the NYSE Arca Equities Schedule of Fees and Charges in a separate proposed rule change.

The Exchange believes that proposed Commentary .01 harmonizes the Exchange's listing standards for all Exchange-Traded Funds that will be listed on the Exchange, even if they were previously listed pursuant to different continued listing requirements. Specifically, as noted in the Rule 6c-11 Release, one year following the effective date of Rule 6c-11, the Commission will be rescinding those portions of its prior ETF exemptive orders under the 1940 Act that grant relief related to the formation and operation of certain ETFs. The Exchange believes that once this occurs, all Exchange-Traded Funds will be subject to the same requirements under Rule 6c-11 and will no longer be subject to any differing requirements that may have been set forth in the exemptive orders issued before the effective date of Rule 6c-11. The Exchange therefore believes that any such Exchange-Traded Funds that were previously-listed on the Exchange under a different standard should be deemed approved for listing on the Exchange under proposed Rule 5.2-E(j)(8). To maintain consistent standards for all Exchange-Traded Fund Shares on the Exchange, the Exchange further believes that such previously-listed products should no longer be required to comply with the previously-applicable continued listing requirements for such Exchange-Traded Funds.

Proposed Commentary .02 to Rule 5.2-E(j)(8) would provide that the following requirements shall be met by series of Exchange-Traded Fund Shares on an initial and continued listing basis. With respect to series of Exchange-Traded Fund Shares that are based on an index: (1) If the underlying index is maintained by a broker-dealer or fund adviser, the broker-dealer or fund adviser will erect and maintain a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index will be calculated by a third party who is not a broker-dealer or fund adviser. (2) Any advisory committee, supervisory board, or similar entity that advises a Reporting

Authority or that makes decisions on the index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index. See proposed Commentary .02 (a) to Rule 5.2-E(j)(8)).

In addition, with respect to series of Exchange-Traded Fund Shares that are actively managed, if the investment adviser to the investment company issuing Exchange-Traded Fund Shares is affiliated with a broker-dealer, such investment adviser will erect and maintain 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 Exchange-Traded Fund's portfolio. Personnel who make decisions on the Exchange-Traded Fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Exchange-Traded Fund portfolio. The Reporting Authority that provides information relating to the portfolio of a series of Exchange-Traded Fund Shares must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of such portfolio. (See proposed Commentary .02(b) to Rule 5.2-E(j)(8)).

The Exchange also proposes non-substantive amendments to include Exchange-Traded Fund Shares in other Exchange rules. Specifically, the Exchange proposes to amend Rule 5.3-E, concerning Corporate Governance and Disclosure Policies, and Rule 5.3-E(e), concerning Shareholder/Annual Meetings, to add Exchange-Traded Fund Shares to the enumerated derivative and special purpose securities that are subject to the respective Rules. Thus, Exchange-Traded Fund Shares would be subject to corporate governance, disclosure and shareholder/annual meeting requirements that are consistent

with other derivative and special purpose securities enumerated in those Rules.

The Exchange believes that proposed Rule 5.2-E(j)(8) would promote transparency surrounding the listing process for Exchange-Traded Fund Shares. The Exchange notes that Exchange-Traded Fund Shares will be subject to all Exchange rules applicable to equities trading and that Rule 6c-11 does not change the Exchange rules applicable to these securities.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in a series of Exchange-Traded Fund Shares.[15] Trading in Exchange-Traded Fund Shares will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12-E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in Exchange-Traded Fund Shares inadvisable.

NYSE Arca Rule 7.18-E(d)(2) provides that, with respect to Derivative Securities Products (which would include Exchange-Traded Fund Shares) listed on the Exchange for which a Net Asset Value ("NAV") is disseminated, if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading in the affected Derivative Securities Product on the NYSE Arca Marketplace until such time as the NAV is available to all market participants.

Minimum Price Variation

As provided in NYSE Arca Rule 7.6-E, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is

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[15] See NYSE Arca Rule 7.12-E.

$0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Exchange-Traded Fund Shares in all trading sessions and to deter and detect violations of Exchange rules. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which are currently applicable to Investment Company Units and Managed Fund Shares, among other product types, to monitor trading in Exchange-Traded Fund Shares. The Exchange or the Financial Industry Regulatory Authority, Inc. ("FINRA"), on behalf of the Exchange, will communicate as needed regarding trading in Exchange-Traded Fund Shares and certain of their applicable underlying components with other markets that are members of the Intermarket Surveillance Group ("ISG") or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange may obtain information regarding trading in Exchange-Traded Fund Shares and certain of their applicable underlying components from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Additionally, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities that may be held by a series of Exchange-Traded Fund Shares reported to FINRA's TRACE. FINRA also can access data obtained from the Municipal Securities Rulemaking Board's Electronic Municipal Market Access ("EMMA") system relating to municipal bond trading activity for surveillance purposes in connection with trading in a series of Exchange-Traded Fund

Shares, to the extent that a series of Exchange-Traded Fund Shares holds municipal securities. As noted above, the issuer of a series of Exchange-Traded Fund Shares will be required to comply with Rule 10A-3 under the Act for the initial and continued listing of Exchange-Traded Fund Shares, as provided under Rule 5.3-E.

Pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. As provided for under proposed Rule 5.2-E(j)(8)(e)(2), if the fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Rule 5.5-E(m).

The Exchange will utilize its existing procedures to monitor issuer compliance with the requirements of proposed Rule 5.2-E(j)(8). For example, the Exchange will continue to use intraday alerts that will notify Exchange personnel of trading activity throughout the day that may indicate that certain disclosures are not being made accurately or that other unusual conditions or circumstances are present that could be detrimental to the maintenance of a fair and orderly market. The Exchange will require periodic certification from the issuer of a series of Exchange-Traded Fund Shares that it is in compliance with Rule 6c-11. In addition, the Exchange will periodically review issuer websites to monitor whether disclosures are being made for a series of Exchange-Traded Fund Shares as required by Rule 6c-11(c)(1). The Exchange also notes that proposed Rule 5.2-E(j)(8)(e) would require an issuer of Exchange-Traded Fund Shares to notify the Exchange that it is no longer eligible to operate in reliance on Rule 6c-11 or that it does not comply with the requirements of proposed Rule 5.2-E(j)(8). The Exchange will rely on the foregoing procedures to become aware of any non-compliance

with the requirements of Rule 5.2-E(j)(8).

Firewalls

Commentary .01(b)(1) and Commentary .02(b) to NYSE Arca Rule 5.2-E (j)(3) (applicable to Investment Company Units) and Commentary .06 to NYSE Arca Rule 8.600-E (applicable to Managed Fund Shares) require the establishment and maintenance of a "firewall" around personnel who have access to information concerning changes to an index or the composition and/or changes to a fund's portfolio; and that specified persons or entities be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index or portfolio.

In the Rule 6c-11 Release, the Commission, in the context of index-based ETFs with affiliated index providers ("self-indexed ETFs"), noted the federal securities law provisions that currently relate to implementation by funds of appropriate measures to deal with misuse of non-public information.[16] The Exchange notes that these federal securities laws requirements will continue to apply to issues of index and actively-

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[16] See Rule 6c-11 Release at 57168-57169. See also, 17 CFR 270.38a-1 (rule 38a-1 under the 1940 Act) (requiring funds to adopt policies and procedures reasonably designed to prevent violation of federal securities laws); 17 CFR 270.17j-1(c)(1) (rule 17j-1(c)(1) under the Investment Company Act) (requiring funds to adopt a code of ethics containing provisions designed to prevent certain fund personnel ("access persons") from misusing information regarding fund transactions); section 204A of the Investment Advisers Act of 1940 ("Advisers Act") (15 U.S.C. 80b-204A) (requiring an adviser to adopt policies and procedures that are reasonably designed, taking into account the nature of its business, to prevent the misuse of material, non-public information by the adviser or any associated person, in violation of the Advisers Act or the Exchange Act, or the rules or regulations thereunder); section 15(g) of the Exchange Act (15 U.S.C. 78o(f)) (requiring a registered broker or dealer to adopt policies and procedures reasonably designed, taking into account the nature of the broker's or dealer's business, to prevent the misuse of material, nonpublic information by the broker or dealer or any person associated with the broker or dealer, in violation of the Exchange Act or the rules or regulations thereunder).

managed ETFs and the proposed generic listing rules for Exchange-Traded Fund Shares are consistent with such requirements. The Exchange notes that proposed Commentary .02(a) to Rule 5.2-E(j)(8) provides that, with respect to series of Exchange-Traded Fund Shares that are based on an index, if the underlying index is maintained by a broker-dealer or fund adviser, the broker-dealer or fund adviser will erect and maintain a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer or fund advisor. In addition, proposed Commentary .02(b) provides that, with respect to series of Exchange-Traded Fund Shares that are actively managed, if the investment adviser to the Exchange-Traded Fund issuing Exchange-Traded Fund Shares is affiliated with a broker-dealer, such investment adviser will erect and maintain 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 Exchange-Traded Fund portfolio.

In support of this proposal, the Exchange represents that:

(1) the Exchange-Traded Fund Shares will conform to the initial and continued listing criteria under Rule 5.2-E(j)(8);

(2) the Exchange’s surveillance procedures are adequate to properly monitor the trading of the Exchange-Traded Fund Shares in all trading sessions and to deter and detect violations of Exchange rules. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which will include Exchange-Traded Fund Shares, to monitor trading in the Exchange-Traded Fund Shares;

(3) the issuer of a series of Exchange-Traded Fund Shares will be

required to comply with Rule 10A-3 under the Act for the initial and continued listing of Exchange-Traded Fund Shares, as provided under Rule 5.3-E; and

(4) Exchange-Traded Fund Shares will be subject to all Exchange rules applicable to equities trading.

Proposed Discontinuance of Quarterly Reporting Obligation for Managed Fund Shares

In its order approving the Exchange's proposal to adopt generic listing standards for Managed Fund Shares,[17] the Commission noted that the Exchange has represented that it would "provide the Commission staff with a report each calendar quarter that includes the following information for issues of Managed Fund Shares listed during such calendar quarter under Commentary .01 to NYSE Arca Rule 8.600-E: (1) trading symbol and date of listing on the Exchange; (2) the number of active authorized participants and a description of any failure of an issue of Managed Fund Shares listed pursuant to Commentary .01 to Rule 8.600-E or of an authorized participant to deliver shares, cash, or cash and financial instruments in connection with creation or redemption orders; and (3) a description of any failure of an issue of Managed Fund Shares to comply with Rule 8.600-E."[18] The Exchange has provided such information to the Commission on a quarterly basis for two years. The requirement to provide such quarterly reports for Managed Fund Shares is not separately specified in Rule 8.600-E, and Investment Company Units listed under Rule 5.2-E(j)(3) have not been subject to a similar

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17 See Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (the "Managed Fund Shares Approval Order").

18 See Managed Fund Shares Approval Order at footnote 18.

requirement.

The generic listing criteria in proposed Rule 5.2-E(j)(8) will now apply equally both to Exchange-Traded Fund Shares that are Investment Company Units previously listed under Rule 5.2-E(j)(3) and those that are Managed Fund Shares previously listed under Commentary .01 to Rule 8.600-E. All types of Exchange-Traded Fund Shares, whether index-based or actively managed, must be eligible to operate in reliance on Rule 6c-11.[19] The Exchange believes no purpose would be served by continuing to require quarterly reports for one class of ETFs and not another when both would be subject to the same Exchange generic listing rules. The Exchange, therefore, proposes to discontinue such reporting going forward.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[20] in general, and furthers the objectives of Section 6(b)(5) of the Act,[21] in particular, because it is designed to prevent fraudulent and manipulative acts and

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[19] The Exchange notes that Rule 6c-11(d) sets forth recordkeeping requirements applicable to exchange-traded funds, and provides that that the exchange-traded fund must maintain and preserve for a period of not less than five years, the first two years in an easily accessible place: (1) All written agreements (or copies thereof) between an authorized participant and the exchange-traded fund or one of its service providers that allows the authorized participant to place orders for the purchase or redemption of creation units; (2) For each basket exchanged with an authorized participant, records setting forth: (i) The ticker symbol, CUSIP or other identifier, description of holding, quantity of each holding, and percentage weight of each holding composing the basket exchanged for creation units; (ii) If applicable, identification of the basket as a custom basket and a record stating that the custom basket complies with policies and procedures that the exchange-traded fund adopted pursuant to paragraph (c)(3) of Rule 6c-11; (iii) Cash balancing amount (if any); and (iv) Identity of authorized participant transacting with the exchange-traded fund.

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

By facilitating efficient procedures for listing ETFs that are permitted to operate in reliance on Rule 6c-11, the generic listing rules in proposed Rule 5.2-E(j)(8) described above are consistent with, and will further, the Commission's goals in adopting Rule 6c-11. In addition, by allowing Exchange-Traded Fund Shares to be listed and traded on the Exchange without a prior Commission approval order or notice of effectiveness pursuant to Section 19(b) of the Act, proposed Rule 5.2-E(j)(8) will significantly reduce the time frame and costs associated with bringing these securities to market, thereby promoting market competition among issuers of Exchange-Traded Fund Shares, to the benefit of the investing public.

In addition, the proposed rule change would fulfill the intended objective of Rule 19b-4(e) under the Act by permitting Exchange-Traded Fund Shares that satisfy the proposed listing standards to be listed and traded without separate Commission approval.

As provided in proposed Rule 5.2-E(j)(8)(e), the Exchange may approve Exchange-Traded Fund Shares for listing and trading on the Exchange subject to the requirement that the investment company issuing a series of Exchange-Traded Fund Shares is eligible to operate in reliance on Rule 6c-11[22] under the 1940 Act and must satisfy the requirements of Rule 5.2-E(j)(8) on an initial listing and a continuing basis. An issuer of such securities must notify the Exchange of any failure to comply with such requirements. These requirements will ensure that Exchange-listed Exchange-Traded

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[22] Rule 6c-11(c) sets forth certain conditions applicable to exchange-traded funds, including information required to be disclosed on the fund's website.

Fund Shares continue to operate in a manner that fully complies with the portfolio transparency requirements of Rule 6c-11(c).

As provided in proposed Rule 5.2-E(j)(8)(e)(1), Exchange-Traded Fund Shares will be listed and traded on the Exchange subject to the requirement that the investment company issuing a series of Exchange-Traded Fund Shares is eligible to operate in reliance on the requirements of Rule 6c-11(c) under the 1940 Act on an initial and continued listing basis.

As provided in proposed Rule 5.2-E(j)(8)(e)(2) (Suspension of trading or removal), the Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 5.5-E(m) of, a series of Exchange-Traded Fund Shares if the investment company notifies the Exchange or if the Exchange otherwise becomes aware that is no longer eligible to operate in reliance on Rule 6c-11 or that it does not comply with the requirements set forth in Rule 5.2-E(j)(8); if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Exchange-Traded Fund Shares, there are fewer than 50 beneficial holders of such series of Exchange-Traded Fund Shares; or if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

As provided in proposed Rule 5.2-E(j)(8)(g), the Exchange will implement written surveillance procedures for Exchange-Traded Fund Shares. The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Exchange-Traded Fund Shares in all trading sessions and to deter and detect violations of Exchange rules. Specifically, the Exchange intends to utilize its existing

surveillance procedures applicable to derivative products, which will include Exchange-Traded Fund Shares, to monitor trading in the Exchange-Traded Fund Shares.

Proposed Rule 5.2-E(j)(8)(h) provides that, upon termination of an investment company issuing Exchange-Traded Fund Shares, the Exchange requires that Exchange-Traded Fund Shares issued in connection with such entity be removed from Exchange listing. Proposed Rule 5.2-E(j)(8)(i) provides that the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in a series of Exchange-Traded Fund Shares, and that trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

Proposed Commentary .01 to Rule 5.2-E(j)(8) provides that a security that has previously been approved for listing on the Exchange pursuant to the generic listing requirements specified in Rule 5.2-E(j)(3) or Commentary .01 to Rule 8.600-E, or pursuant to a proposed rule change approved or subject to a notice of effectiveness by the Commission, may be considered approved for listing solely under Rule 5.2-E(j)(8) if such security is eligible to operate in reliance on Rule 6c-11 under the 1940 Act. Once so approved for listing, the continued listing requirements applicable to such previously-listed security will be those specified in paragraph (e) of Rule 5.2-E(j)(8). Any requirements for listing as specified in Rule 5.2-E(j)(3) or Commentary .01 to Rule 8.600-E, or an approval order or notice of effectiveness of a separate proposed rule change that differ from the requirements of Rule 5.2-E(j)(8) will no longer be applicable to such security. The Exchange believes proposed Commentary .01 will streamline the listing process for such securities, consistent with the regulatory framework adopted in Rule 6c-11 under the 1940 Act.

Proposed Commentary .02 to Rule 5.2-E(j)(8) would provide requirements to be met by shall be met on an initial and continued listing basis by series of Exchange-Traded Fund Shares that are based on an index or are actively managed regarding the erection and maintenance of a “fire wall” as well as implementation and maintenance of procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index or portfolio. The Exchange believes the provisions of Commentary .02 will address possible concerns regarding misuse of material non-public information regarding an index underlying a series of Exchange-Traded Fund Shares or the portfolio for a series of Exchange-Traded Fund Shares, as applicable.

The proposed addition of Exchange-Traded Fund Shares to the enumerated derivative and special purpose securities that are subject to the provisions of Rule 5.3-E (Corporate Governance and Disclosure Policies) and Rule 5.3-E (e) (Shareholder/Annual Meetings) would subject Exchange-Traded Fund Shares to the same requirements currently applicable to other 1940 Act-registered investment company securities (i.e., Investment Company Units, Managed Fund Shares and Portfolio Depositary Receipts).

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Exchange-Traded Fund Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, will communicate as needed regarding trading in Exchange-Traded Fund Shares with other markets that are members of ISG, including all U.S. securities exchanges on which the components are traded. In addition, the Exchange may obtain information regarding trading in Exchange-Traded Fund Shares from other markets that

are members of the ISG, including all U.S. securities exchanges on which the components are traded, or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which are currently applicable to Investment Company Units and Managed Fund Shares, among other product types, to monitor trading in Exchange-Traded Fund Shares. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in Exchange-Traded Fund Shares and certain of their applicable underlying components with other markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange may obtain information regarding trading in Exchange-Traded Fund Shares and certain of their applicable underlying components from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Additionally, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities that may be held by a series of Exchange-Traded Fund Shares reported to FINRA's TRACE. FINRA also can access data obtained from the Municipal Securities Rulemaking Board's EMMA system relating to municipal bond trading activity for surveillance purposes in connection with trading in a series of Exchange-Traded Fund Shares, to the extent that a series of Exchange-Traded Fund Shares holds municipal securities. As noted above, the issuer of a series of Exchange-Traded Fund Shares will be required to comply with Rule 10A-3 under the Act for the initial and continued listing of Exchange-Traded Fund Shares, as provided under Rule 5.3-E.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in a series of Exchange-Traded Fund Shares.[23] Trading in Exchange-Traded Fund Shares will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12-E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in Exchange-Traded Fund Shares inadvisable. NYSE Arca Rule 7.18-E(d)(2) provides that, with respect to Derivative Securities Products (which would include Exchange-Traded Fund Shares) listed on the Exchange for which an NAV is disseminated, if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading in the affected Derivative Securities Product on the NYSE Arca Marketplace until such time as the NAV is available to all market participants.

The Exchange will monitor for compliance with the continued listing requirements. If the Exchange-Traded Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Rule 5.5-E(m).

The Exchange will also continue to use intraday alerts that will notify Exchange personnel of trading activity throughout the day that may indicate that certain disclosures are not being made accurately or that other unusual conditions or circumstances are present that could be detrimental to the maintenance of a fair and orderly market. In addition, the Exchange, on a periodic basis will review issues of Exchange-Traded Fund Shares listed on the Exchange for compliance with the website disclosure requirements of

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[23] See NYSE Arca Rule 7.12-E.

Rule 6c-11(c)(1). Proposed Rule 5.2-E(j)(8)(e) would require an issuer of Exchange-Traded Fund Shares to notify the Exchange if it is no longer eligible to operate in reliance on Rule 6c-11 or that it does not comply with the requirements of proposed Rule 5.2-E(j)(8) (except for subparagraph (1)(A) of Rule 5.2-E(j)(8)(e)).

With respect to the proposed discontinuance of quarterly reports currently required for Managed Fund Shares, the Exchange believes such quarterly reports are no longer necessary in view of the requirements of Rule 6c-11(d). The generic listing criteria in proposed Rule 5.2-E(j)(8) will now apply equally both to Exchange-Traded Fund Shares that are Investment Company Units previously listed under Rule 5.2-E(j)(3) and those that are Managed Fund Shares previously listed under Commentary .01 to Rule 8.600-E. All types of Exchange-Traded Fund Shares, whether index-based or actively managed, must be eligible to operate in reliance on Rule 6c-11.[24] The Exchange believes no purpose would be served by continuing to require quarterly reports for one class of ETFs and not another when both would be subject to the same Exchange generic listing rules. The Exchange, therefore, proposes to discontinue such reporting going forward.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

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

In accordance with Section 6(b)(8) of the Act,[25] 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. Instead, the Exchange believes that the proposed rule change would facilitate the listing and trading of

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[24] See note 19, supra.

[25] 15 U.S.C. 78f(b)(8).

Exchange-Traded Fund Shares and result in an efficient process surrounding the listing and trading of Exchange-Traded Fund Shares, which will enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange believes that this will reduce the time frame for bringing Exchange-Traded Fund Shares to market, thereby reducing the burdens on issuers and other market participants and promoting competition. In turn, the Exchange believes that the proposed change would make the process for listing Exchange-Traded Fund Shares more competitive by applying uniform listing standards with respect to Exchange-Traded Fund Shares.

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

Within 45 days of the date of publication of this notice in the Federal Register or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEARCA-2019-81 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-NYSEARCA-2019-81. 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-NYSEARCA-2019-81 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.[26]

Eduardo A. Aleman
Deputy Secretary

[26] 17 CFR 200.30-3(a)(12).

EXHIBIT 4

Additions underscored
Deletions [bracketed]
Bold italics indicate changes from Exhibit 5 to SR-NYSEArca-2019-81 as originally filed.

Rules of NYSE Arca, Inc.

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Rule 5-E Equities Listings

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Section 2. Applications to List

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Rule 5.2-E(j)(8). Exchange-Traded Fund Shares

(a) The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Exchange-Traded Fund Shares that meet the criteria of this Rule.

[(1) A Derivative Securities Product listed under this Rule does not need to separately meet either the initial or continued listing requirements of any other Exchange rules.]

(b) Applicability. This Rule is applicable only to Exchange-Traded Fund Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, Exchange rules will be applicable to the trading on the Exchange of such securities. Exchange-Traded Fund Shares are included within the definition of NMS Stock as defined in Rule 1.1.

(c) Definitions. The following are definitions for purposes of this Rule:

(1) "1940 Act" means the Investment Company Act of 1940, as amended.

(2) "Exchange-Traded Fund" has the same meaning as the term "exchange-traded fund" as defined in Rule 6c-11(a)(1) under the 1940 Act.

(3) "Exchange-Traded Fund Share" means a share of stock issued by an Exchange-Traded Fund.

(4) "Reporting Authority" means, in respect of a particular series of Exchange-Traded Fund Shares, the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Exchange-Traded Fund Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting

information relating to such series, including, but not limited to, ***any current index or portfolio value, the current value of the portfolio of any securities required to be deposited in connection with issuance of Exchange Traded Fund Shares,*** the amount of any ***dividend equivalent payment or*** cash distribution to holders of Exchange-Traded Fund Shares, net asset value, or other information relating to the issuance, redemption or trading of Exchange-Traded Fund Shares. A series of Exchange-Traded Fund Shares may have more than one Reporting Authority, each having different functions.

(d) Limitation of Exchange Liability. Neither the Exchange, the Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current index or portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Exchange-Traded Fund Shares; [portfolio holdings;] the amount of any dividend equivalent payment or cash distribution to holders of Exchange-Traded Fund Shares; net asset value; or other information relating to the purchase, redemption, or trading of Exchange-Traded Fund Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

(e) The Exchange may approve Exchange-Traded Fund Shares for listing and/or trading (including pursuant to unlisted trading privileges) pursuant to Rule 19b-4(e) under the Exchange Act. Each series of Exchange-Traded Fund Shares must be eligible to operate in reliance on Rule 6c-11 under the 1940 Act and***, except for subparagraph (1)(A) of Rule 5.2-E(j)(8)(e),*** must satisfy the requirements of [this] ***Rule 5.2-E(j)(8)*** upon initial listing and on a continuing basis. An issuer of such securities must notify the Exchange of any failure to comply with such requirements.

(1) Initial and Continued Listing−Exchange-Traded Fund Shares will be listed and traded on the Exchange subject to the requirement that the investment company issuing a series of Exchange-Traded Fund Shares is [in compliance with] ***eligible to operate in reliance on*** the requirements of Rule 6c-11(c) under the 1940 Act on an initial and continued listing basis.

(A) Initial Shares Outstanding. For each series of Exchange-Traded Fund Shares, the Exchange will establish a minimum number of Exchange-Traded Fund Shares required to be outstanding at the time of commencement of trading on the Exchange.

(2) Suspension of trading or removal. The Exchange [will maintain surveillance procedures for securities listed under this rule and] will consider the suspension of

trading in, and will commence delisting proceedings under Rule 5.5-E(m) of, a series of Exchange-Traded Fund Shares under any of the following circumstances:

(A) if the investment company notifies the Exchange ***or if the Exchange otherwise becomes aware*** that it [does not comply with the requirements of] ***is no longer eligible to operate in reliance on*** Rule 6c-11 ***or that it does not comply with the requirements set forth in Rule 5.2-E(j)(8)***; [or]

(B) ***if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Exchange-Traded Fund Shares, there are fewer than 50 beneficial holders of such series of Exchange-Traded Fund Shares***; or

(C) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

(f) Transactions in Exchange-Traded Fund Shares will occur during the trading hours specified in Rule 7.34-E(a).

(g) Surveillance Procedures. The Exchange will implement and maintain written surveillance procedures for Exchange-Traded Fund Shares.

(h) Termination. Upon termination of an investment company issuing Exchange-Traded Fund Shares, the Exchange requires that Exchange-Traded Fund Shares issued in connection with such entity be removed from Exchange listing.

(i) Trading Halts. The Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in a series of Exchange-Traded Fund Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which certain information about the Exchange-Traded Fund Shares that is required to be disclosed under Rule 6c-11 under the 1940 Act is not being made available; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Commentary:

.01 A [Derivative Securities Product] security that has previously been approved for listing on the Exchange pursuant to the generic listing requirements specified in Rule 5.2-E(j)(3) or Commentary .01 to Rule 8.600-E, or pursuant to a proposed rule change ***filed and*** approved or subject to a notice of effectiveness by the Commission, [will be deemed to be] may be considered approved for listing solely under [this] Rule 5.2-E(j)(8) if such [Derivative Securities Product] security is [both (1) permitted to operate in reliance on Rule 6c-11 under the 1940 Act, and (2) the prior exemptive relief under the 1940 Act for such Derivative Securities Product has been rescinded. At such time, the continued listing

requirements applicable to such previously-listed Derivative Securities Products will be those specified in paragraph (e) of this Rule.] ***eligible to operate in reliance on Rule 6c-11 under the 1940 Act. Once so approved for listing, the continued listing requirements applicable to such previously-listed security will be those specified in paragraph (e) of Rule 5.2-E(j)(8)***. Any requirements for listing as specified in Rule 5.2-E(j)(3) or Commentary .01 to Rule 8.600-E, or an approval order or notice of effectiveness of a separate proposed rule change that differ from the requirements of ***Rule 5.2-E(j)(8)*** will no longer be applicable to such [Derivative Securities Products] security.

.02 The following requirements shall be met by series of Exchange-Traded Fund Shares on an initial and continued listing basis:

(a) With respect to series of Exchange-Traded Fund Shares that are based on an index:

(1) If the underlying index is maintained by a broker-dealer or fund adviser, the broker-dealer or fund adviser will erect and maintain a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index will be calculated by a third party who is not a broker-dealer or fund adviser.

(2) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.

(b) With respect to series of Exchange-Traded Fund Shares that are actively managed, if the investment adviser to the investment company issuing Exchange-Traded Fund Shares is affiliated with a broker-dealer, such investment adviser will erect and maintain 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 Exchange-Traded Fund's portfolio. Personnel who make decisions on the Exchange-Traded Fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Exchange-Traded Fund portfolio. The Reporting Authority that provides information relating to the portfolio of a series of Exchange-Traded Fund Shares must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of such portfolio.

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Rule 5.3-E. Corporate Governance and Disclosure Policies

The Exchange shall require that specific corporate governance and disclosure policies be established by domestic issuers of any equity security listed pursuant to Rule 5.2-E.

Issuers of any security that is listed pursuant to the Rules of the Exchange must comply with all of the provisions of Rule 5.3-E.

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For purposes of this Rule 5.3-E, derivative and special purpose securities are defined as those securities listed pursuant to Rules 5.2-E(h) (Unit Investment Trusts), 5.2-E(j)(2) (Equity Linked Notes), 5.2-E(j)(3) (Investment Company Units), 5.2-E(j)(4) (Index-Linked Exchangeable Notes), 5.2-E(j)(5) (Equity Gold Shares), 5.2-E(j)(6) (Equity-Index Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities), 5.2-E(j)(8) (Exchange-Traded Fund Shares), 8.100-E (Portfolio Depositary Receipts), 8.200-E (Trust Issued Receipts), 8.201-E (Commodity-Based Trust Shares), 8.202-E (Currency Trust Shares), 8.203-E (Commodity Index Trust Shares), 8.204-E (Commodity Futures Trust Shares), 8.300-E (Partnership Units), 8.400-E (Paired Trust Shares), 8.600-E (Managed Fund Shares) and 8.700-E (Managed Trust Securities).

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Rule 5.3-E(e). Shareholder/Annual Meetings

(1) A listed company listing common stock or voting preferred stock, and their equivalents, is required to hold an annual meeting of shareholders to elect directors and to take action on other corporate matters in accordance with its charter, by-laws and applicable state or other laws. In the event unusual circumstances affecting the company shall preclude the holding of its annual meeting within a reasonable period after the time specified in its charter, the Exchange must be informed in writing, stating the reasons for the delay, and good faith efforts must be made to ensure that such annual meeting is held as soon as reasonably practicable in light of the circumstances causing the delay.

This Rule 5.3-E(e)(1) is not applicable to preferred and debt listings, passive business organizations (such as royalty trusts), and derivative and special purpose securities (securities listed pursuant to 5.2-E(h) (Unit Investment Trusts), 5.2-E(j)(2) (Equity Linked Notes), 5.2-E(j)(3) (Investment Company Units), 5.2-E(j)(4) (Index-Linked Exchangeable Notes), 5.2-E(j)(5) (Equity Gold Shares), 5.2-E(j)(6) (Equity-Index Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities), 5.2-E(j)(8) (Exchange-Traded Fund Shares), Rule 8.100-E (Portfolio Depositary Receipts), 8.200-E (Trust Issued Receipts), 8.201-E (Commodity-Based Trust Shares), 8.202-E (Currency Trust Shares), 8.203-E (Commodity Index Trust Shares), 8.204-E (Commodity Futures Trust Shares), 8.300-E (Partnership Units), 8.400-E (Paired Trust Shares), 8.600-E (Managed Fund Shares) and 8.700-E (Managed Trust Securities).)

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EXHIBIT 5

Additions underscored
Deletions [bracketed]

Rules of NYSE Arca, Inc.

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Rule 5-E Equities Listings

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Section 2. Applications to List

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Rule 5.2-E(j)(8). Exchange-Traded Fund Shares

(a) The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Exchange-Traded Fund Shares that meet the criteria of this Rule.

(b) Applicability. This Rule is applicable only to Exchange-Traded Fund Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, Exchange rules will be applicable to the trading on the Exchange of such securities. Exchange-Traded Fund Shares are included within the definition of NMS Stock as defined in Rule 1.1.

(c) Definitions. The following are definitions for purposes of this Rule:

(1) "1940 Act" means the Investment Company Act of 1940, as amended.

(2) "Exchange-Traded Fund" has the same meaning as the term "exchange-traded fund" as defined in Rule 6c-11(a)(1) under the 1940 Act.

(3) "Exchange-Traded Fund Share" means a share of stock issued by an Exchange-Traded Fund.

(4) "Reporting Authority" means, in respect of a particular series of Exchange-Traded Fund Shares, the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Exchange-Traded Fund Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value, the current value of the portfolio of any securities required to be deposited in connection with issuance of Exchange Traded Fund Shares, the amount of any dividend equivalent payment or cash distribution to holders of Exchange-

Traded Fund Shares, net asset value, or other information relating to the issuance, redemption or trading of Exchange-Traded Fund Shares. A series of Exchange-Traded Fund Shares may have more than one Reporting Authority, each having different functions.

(d) Limitation of Exchange Liability. Neither the Exchange, the Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current index or portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Exchange-Traded Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Exchange-Traded Fund Shares; net asset value; or other information relating to the purchase, redemption, or trading of Exchange-Traded Fund Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

(e) The Exchange may approve Exchange-Traded Fund Shares for listing and/or trading (including pursuant to unlisted trading privileges) pursuant to Rule 19b-4(e) under the Exchange Act. Each series of Exchange-Traded Fund Shares must be eligible to operate in reliance on Rule 6c-11 under the 1940 Act and, except for subparagraph (1)(A) of Rule 5.2-E(j)(8)(e), must satisfy the requirements of Rule 5.2-E(j)(8) upon initial listing and on a continuing basis. An issuer of such securities must notify the Exchange of any failure to comply with such requirements.

(1) Initial and Continued Listing−Exchange-Traded Fund Shares will be listed and traded on the Exchange subject to the requirement that the investment company issuing a series of Exchange-Traded Fund Shares is eligible to operate in reliance on the requirements of Rule 6c-11(c) under the 1940 Act on an initial and continued listing basis.

(A) Initial Shares Outstanding. For each series of Exchange-Traded Fund Shares, the Exchange will establish a minimum number of Exchange-Traded Fund Shares required to be outstanding at the time of commencement of trading on the Exchange.

(2) Suspension of trading or removal. The Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 5.5-E(m) of, a series of Exchange-Traded Fund Shares under any of the following circumstances:

(A) if the investment company notifies the Exchange or if the Exchange otherwise becomes aware that it is no longer eligible to operate in reliance

on Rule 6c-11 or that it does not comply with the requirements set forth in Rule 5.2-E(j)(8);

(B) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Exchange-Traded Fund Shares, there are fewer than 50 beneficial holders of such series of Exchange-Traded Fund Shares; or

(C) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

(f) Transactions in Exchange-Traded Fund Shares will occur during the trading hours specified in Rule 7.34-E(a).

(g) Surveillance Procedures. The Exchange will implement and maintain written surveillance procedures for Exchange-Traded Fund Shares.

(h) Termination. Upon termination of an investment company issuing Exchange-Traded Fund Shares, the Exchange requires that Exchange-Traded Fund Shares issued in connection with such entity be removed from Exchange listing.

(i) Trading Halts. The Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in a series of Exchange-Traded Fund Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

Commentary:

.01 A security that has previously been approved for listing on the Exchange pursuant to the generic listing requirements specified in Rule 5.2-E(j)(3) or Commentary .01 to Rule 8.600-E, or pursuant to a proposed rule change approved or subject to a notice of effectiveness by the Commission, may be considered approved for listing solely under Rule 5.2-E(j)(8) if such security is eligible to operate in reliance on Rule 6c-11 under the 1940 Act. Once so approved for listing, the continued listing requirements applicable to such previously-listed security will be those specified in paragraph (e) of Rule 5.2-E(j)(8). Any requirements for listing as specified in Rule 5.2-E(j)(3) or Commentary .01 to Rule 8.600-E, or an approval order or notice of effectiveness of a separate proposed rule change that differ from the requirements of Rule 5.2-E(j)(8) will no longer be applicable to such security.

.02 The following requirements shall be met by series of Exchange-Traded Fund Shares on an initial and continued listing basis:

(a) With respect to series of Exchange-Traded Fund Shares that are based on an index:

(1) If the underlying index is maintained by a broker-dealer or fund adviser, the broker-dealer or fund adviser will erect and maintain a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index will be calculated by a third party who is not a broker-dealer or fund adviser.

(2) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.

(b) With respect to series of Exchange-Traded Fund Shares that are actively managed, if the investment adviser to the investment company issuing Exchange-Traded Fund Shares is affiliated with a broker-dealer, such investment adviser will erect and maintain 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 Exchange-Traded Fund's portfolio. Personnel who make decisions on the Exchange-Traded Fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Exchange-Traded Fund portfolio. The Reporting Authority that provides information relating to the portfolio of a series of Exchange-Traded Fund Shares must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of such portfolio.

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Rule 5.3-E. Corporate Governance and Disclosure Policies

The Exchange shall require that specific corporate governance and disclosure policies be established by domestic issuers of any equity security listed pursuant to Rule 5.2-E. Issuers of any security that is listed pursuant to the Rules of the Exchange must comply with all of the provisions of Rule 5.3-E.

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For purposes of this Rule 5.3-E, derivative and special purpose securities are defined as those securities listed pursuant to Rules 5.2-E(h) (Unit Investment Trusts), 5.2-E(j)(2) (Equity Linked Notes), 5.2-E(j)(3) (Investment Company Units), 5.2-E(j)(4) (Index-Linked Exchangeable Notes), 5.2-E(j)(5) (Equity Gold Shares), 5.2-E(j)(6) (Equity-Index Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities), 5.2-E(j)(8) (Exchange-Traded Fund Shares), 8.100-E (Portfolio Depositary Receipts), 8.200-E (Trust Issued Receipts), 8.201-E (Commodity-Based Trust Shares), 8.202-E (Currency Trust Shares), 8.203-E (Commodity Index Trust Shares), 8.204-E (Commodity Futures Trust Shares), 8.300-E (Partnership Units), 8.400-E (Paired Trust Shares), 8.600-E (Managed Fund Shares) and 8.700-E (Managed Trust Securities).

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Rule 5.3-E(e). Shareholder/Annual Meetings

(1) A listed company listing common stock or voting preferred stock, and their equivalents, is required to hold an annual meeting of shareholders to elect directors and to take action on other corporate matters in accordance with its charter, by-laws and applicable state or other laws. In the event unusual circumstances affecting the company shall preclude the holding of its annual meeting within a reasonable period after the time specified in its charter, the Exchange must be informed in writing, stating the reasons for the delay, and good faith efforts must be made to ensure that such annual meeting is held as soon as reasonably practicable in light of the circumstances causing the delay.

This Rule 5.3-E(e)(1) is not applicable to preferred and debt listings, passive business organizations (such as royalty trusts), and derivative and special purpose securities (securities listed pursuant to 5.2-E(h) (Unit Investment Trusts), 5.2-E(j)(2) (Equity Linked Notes), 5.2-E(j)(3) (Investment Company Units), 5.2-E(j)(4) (Index-Linked Exchangeable Notes), 5.2-E(j)(5) (Equity Gold Shares), 5.2-E(j)(6) (Equity-Index Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities), 5.2-E(j)(8) (Exchange-Traded Fund Shares), Rule 8.100-E (Portfolio Depositary Receipts), 8.200-E (Trust Issued Receipts), 8.201-E (Commodity-Based Trust Shares), 8.202-E (Currency Trust Shares), 8.203-E (Commodity Index Trust Shares), 8.204-E (Commodity Futures Trust Shares), 8.300-E (Partnership Units), 8.400-E (Paired Trust Shares), 8.600-E (Managed Fund Shares) and 8.700-E (Managed Trust Securities).)

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