



Martha Redding
Associate General Counsel
Assistant Secretary

May 19, 2020

VIA E-MAIL

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

Re: Securities Exchange Act Rel. 34-87866 (SR-NYSEArca-2019-95)

Dear Secretary:

NYSE Arca, Inc. filed the attached Amendment No. 3 to the above-referenced filing on May 19, 2020.

Sincerely,

A handwritten signature in blue ink, appearing to be "37" or a similar stylized mark.

Encl. (Amendment No. 3 to SR-NYSEArca-2019-95)

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 - * 95
 Amendment No. (req. for Amendments *) 3

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) *
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Pilot	Extension of Time Period for Commission Action *	Date Expires *	Rule		
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

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

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

Section 806(e)(1) *	Section 806(e)(2) *
<input type="checkbox"/>	<input type="checkbox"/>

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 *).

Proposal to adopt a new NYSE Arca Rule 8.602-E to permit it to list and trade Actively Managed Solution Shares, which are shares of actively managed exchange-traded funds for which the portfolio is disclosed in accordance with standard mutual fund disclosure rules

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 *	Michael.Cavalier@theice.com		
Telephone *	(212) 656-2474	Fax	(212) 656-8101

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.

(Title *)

Date 05/19/2020

By Martha Redding

(Name *)

Associate General Counsel

Martha Redding,

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.

SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549	
For complete Form 19b-4 instructions please refer to the EFFF website.	
<div>Form 19b-4 Information *</div> <div><div>Add</div><div>Remove</div><div>View</div></div>	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.
<div>Exhibit 1 - Notice of Proposed Rule Change *</div> <div><div>Add</div><div>Remove</div><div>View</div></div>	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)
<div>Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *</div> <div><div>Add</div><div>Remove</div><div>View</div></div>	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)
<div>Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications</div> <div><div>Add</div><div>Remove</div><div>View</div></div> <div>Exhibit Sent As Paper Document <input type="checkbox"/></div>	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.
<div>Exhibit 3 - Form, Report, or Questionnaire</div> <div><div>Add</div><div>Remove</div><div>View</div></div> <div>Exhibit Sent As Paper Document <input type="checkbox"/></div>	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.
<div>Exhibit 4 - Marked Copies</div> <div><div>Add</div><div>Remove</div><div>View</div></div>	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.
<div>Exhibit 5 - Proposed Rule Text</div> <div><div>Add</div><div>Remove</div><div>View</div></div>	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.
<div>Partial Amendment</div> <div><div>Add</div><div>Remove</div><div>View</div></div>	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”)¹ and Rule 19b-4 thereunder,² NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) proposes to adopt new NYSE Arca Rule 8.601-E to permit it to list and trade Active Proxy Portfolio Shares, which are shares of actively managed exchange-traded funds for which the portfolio is disclosed in accordance with standard mutual fund disclosure rules. In addition, the Exchange proposes to list and trade shares of the following under proposed NYSE Arca Rule 8.601-E: Natixis U.S. Equity Opportunities ETF, Natixis Vaughan Nelson Select ETF and Natixis Vaughan Nelson MidCap ETF.

This Amendment No. 3 to SR-NYSEArca-2019-95 replaces SR-NYSEArca-2019-95 as originally filed and Amendment 2 thereto and supersedes such filings in their entirety. The Exchange has withdrawn Amendment No. 1 to SR-NYSEArca-2019-95.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1. The text of proposed NYSE Arca Rule 8.601-E is attached hereto 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

The proposed rule change is being submitted to the Securities and Exchange Commission (the “Commission” or “SEC”) by Exchange staff pursuant to authority delegated to it by the NYSE Arca Board of Directors.

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.
(212) 656-2474

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 to add new NYSE Arca Rule 8.601-E for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges ("UTP"), of Active Proxy Portfolio Shares, which are securities issued by an actively managed open-end investment management company. The Exchange also proposes to list and trade shares ("Shares") of the following under proposed NYSE Arca Rule 8.601-E: Natixis U.S. Equity Opportunities ETF, Natixis Vaughan Nelson Select ETF and Natixis Vaughan Nelson MidCap ETF (each a "Fund" and, collectively, "Funds").

Proposed Listing Rules

Proposed Rule 8.601-E (a) provides that the Exchange will consider for trading, whether by listing or pursuant to UTP, Active Proxy Portfolio Shares that meet the criteria of Rule 8.601-E.

Proposed Rule 8.601-E (b) provides that Rule 8.601-E is applicable only to Active Proxy Portfolio Shares and that, except to the extent inconsistent with Rule 8.601-E, or unless the context otherwise requires, the rules and procedures of the Exchange's Board of Directors shall be applicable to the trading on the Exchange of such securities. Proposed Rule 8.601-E (b) provides further that Active Proxy Portfolio Shares are included within the definition of "security" or "securities" as such terms are used in the Rules of the Exchange.

Proposed Rule 8.601-E(c)(1) defines the "Active Proxy Portfolio Share" as a security that (a) is issued by an investment company registered under the Investment Company Act of 1940 ("Investment Company") organized as an open-end management investment company that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a specified minimum number of shares, or multiples thereof, in return for a deposit by the purchaser of the Proxy Portfolio and/or cash with a value equal to the next determined net asset value ("NAV"); (c) when aggregated in the same specified minimum number of Active Proxy Portfolio Shares, or multiples thereof, may be redeemed at a holder's request in return for the Proxy Portfolio and/or cash to the holder by the issuer with a value equal to the next determined NAV; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

Proposed Rule 8.601-E(c)(2) defines the term "Actual Portfolio" as the identities and quantities of the securities and other assets held by the Investment Company that shall form the basis for the Investment Company's calculation of NAV at the end of the business day.

Proposed Rule 8.601-E(c)(3) defines the term “Proxy Portfolio” as a specified portfolio of securities, other financial instruments and/or cash designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series. The website for each series of Active Proxy Portfolio Shares shall disclose the information regarding the Proxy Portfolio as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series, including the following, to the extent applicable:

- (i) Ticker symbol;
- (ii) CUSIP or other identifier;
- (iii) Description of holding;
- (iv) Quantity of each security or other asset held; and
- (v) Percentage weighting of the holding in the portfolio.³

Proposed Rule 8.601-E(c)(4) defines the term “Reporting Authority” in respect of a particular series of Active Proxy Portfolio Shares as the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Active Proxy Portfolio 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, NAV, the Actual Portfolio, Proxy Portfolio, or other information relating to the issuance, redemption or trading of Active Proxy Portfolio Shares. A series of Active Proxy Portfolio Shares may have more than one Reporting Authority, each having different functions.

³ The information required in proposed Rule 8.601-E(c)(3) for the Proxy Portfolio is the same as that required in SEC Rule 6c-11(c)(1)(i)(A) through (E) under the 1940 Act for exchange-traded funds operating in compliance with Rule 6c-11. 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”). The Exchange believes it is appropriate to require such information, rather than all information required under Rule 8.600-E(c)(2). In adopting this requirement for funds operating in compliance with Rule 6c-11, the Commission stated that “a more streamlined requirement will provide standardized portfolio holdings disclosure in a more efficient, less costly, and less burdensome format, while still providing market participants with relevant information. Accordingly, rule 6c-11 will require an ETF to post a subset of the information required by the listing exchanges’ current generic listing standards for actively managed ETFs.” The Commission stated further that “this framework will provide market participants with the information necessary to support an effective arbitrage mechanism and eliminate potential investor confusion due to a lack of standardization.” See Rule 6c-11 Release, notes 249-260 and accompanying text.

Proposed Rule 8.601-E(c)(5) defines the term "normal market conditions" as including, but not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

Proposed Rule 8.601-E (d) sets forth initial and continued listing criteria applicable to Active Proxy Portfolio Shares. Proposed Rule 8.601-E(d)(1) provides that each series of Active Proxy Portfolio Shares shall be listed and traded on the Exchange subject to application of the following criteria:

(A) For each series, the Exchange shall establish a minimum number of Active Proxy Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange.

(B) The Exchange shall obtain a representation from the issuer of each series of Active Proxy Portfolio Shares that the NAV per share for the series shall be calculated daily and that the NAV, the Proxy Portfolio, and the Actual Portfolio shall be made publicly available to all market participants at the same time.

(C) All Active Proxy Portfolio Shares shall have a stated investment objective, which shall be adhered to under normal market conditions.

Proposed Rule 8.601-E(d)(2) provides that each series of Active Proxy Portfolio Shares shall be listed and traded subject to application of the following continued listing criteria: the Actual Portfolio shall be disseminated at least 60 days following the end of every fiscal quarter and shall be made publicly available to all market participants at the same time (proposed Rule 8.601-E(d)(2)(A)(i)), and the Proxy Portfolio will be made publicly available on the website for each series of Active Proxy Portfolio Shares at least once daily and will be made available to all market participants at the same time (proposed Rule 8.601-E(d)(2)(B)(i)).

Proposed Rule 8.601-E(d)(2)(C) provides that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 5.5-E(m) for, a series of Active Proxy Portfolio Shares under any of the following circumstances:

(i) if any of the continued listing requirements set forth in Rule 8.601-E are not continuously maintained;

(ii) if either the Proxy Portfolio or Actual Portfolio is not made available to all market participants at the same time;

(iii) if, following the initial twelve month period after commencement of trading on the Exchange of a series of Active Proxy Portfolio Shares, there are fewer than 50 beneficial holders of such series of Active Proxy Portfolio Shares;

(iv) if the Exchange is notified, or otherwise becomes aware, that the Investment Company is not in compliance with the conditions of any currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to a series of Active Proxy Portfolio Shares;

(v) if any of the statements or representations regarding (a) the description of the portfolio, (b) limitations on portfolio holdings, or (c) the applicability of Exchange listing rules, specified in the Exchange's rule filing pursuant to Section 19(b) of the Act to permit the listing and trading of a series of Active Proxy Portfolio Shares, is not continuously maintained; or

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

Proposed Rule 8.601-E(d)(2)(D) (Trading Halt) provides that (i) The Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Active Proxy Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Active Proxy Portfolio Shares inadvisable. These may include: (a) the extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Portfolio and/or Actual Portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present; (ii) If a series of Active Proxy Portfolio Shares is trading on the Exchange pursuant to unlisted trading privileges, the Exchange shall halt trading in that series as specified in Rule 7.18-E(d)(1); and (iii) If the Exchange becomes aware that the NAV, Proxy Portfolio or Actual Portfolio with respect to a series of Active Proxy Portfolio Shares is not disseminated to all market participants at the same time, the Exchange shall halt trading in such series until such time as the NAV, Proxy Portfolio or Actual Portfolio is available to all market participants at the same time.

Proposed Rule 8.601-E(d)(2)(E) provides that, upon termination of an Investment Company, the Exchange requires that Active Proxy Portfolio Shares issued in connection with such entity be removed from Exchange listing.

Proposed Rule 8.601-E(d)(2)(F) provides that voting rights shall be as set forth in the applicable Investment Company prospectus.

Proposed Rule 8.601-E(e) (Limitation of Exchange Liability) provides that neither the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a 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 portfolio value; the current value of the portfolio of securities required to be deposited to the Investment Company in connection with issuance of Active Proxy Portfolio Shares; the amount of any dividend equivalent payment or cash distribution to holders of

Active Proxy Portfolio Shares; NAV; or other information relating to the purchase, redemption, or trading of Active Proxy Portfolio Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a 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, when the Exchange is acting in the capacity of a 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.

Proposed Commentary .01 to Rule 8.601-E provides that the Exchange will file separate proposals under Section 19(b) of the Act before the listing and trading of a series of Active Proxy Portfolio Shares. All statements or representations contained in such rule filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements.

Proposed Commentary .02 provides that transactions in Active Proxy Portfolio Shares shall occur during the trading hours specified in NYSE Arca Rule 7.34-E(a).

Proposed Commentary .03 provides that the Exchange will implement and maintain written surveillance procedures for Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Active Proxy Portfolio Shares.

Proposed Commentary.04 provides that, if the investment adviser to the Investment Company issuing Active Proxy Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a "fire wall" between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company's Actual Portfolio and/or Proxy Portfolio. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's portfolio composition or has access to non-public information regarding the Investment Company's Actual Portfolio or the Proxy Portfolio or changes thereto must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding

the Actual Portfolio or the Proxy Portfolio or changes thereto.⁴

Proposed Commentary .05 provides that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company's Actual Portfolio or the Proxy Portfolio or changes thereto, must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company Actual Portfolio or the Proxy Portfolio or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a "fire wall" between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company Actual Portfolio or Proxy Portfolio.

The Exchange also proposes non-substantive amendments to include Active Proxy Portfolio Shares in other Exchange rules. Specifically, the Exchange proposes to amend current Rule 5.3-E to include Active Proxy Portfolio Shares listed pursuant to proposed Rule 8.601-E among the derivative or special purpose securities that are subject to a limited set of corporate governance and disclosure policies. Similarly, the Exchange proposes to amend Rule 5.3-E(e) to include Active Proxy Portfolio Shares listed pursuant to proposed Rule 8.601-E among the derivative or special purpose securities to which the requirements concerning shareholder/annual meetings do not apply.

Key Features of Active Proxy Portfolio Shares

While funds issuing Active Proxy Portfolio Shares will be actively-managed and, to that extent, will be similar to Managed Fund Shares, Active Proxy Portfolio Shares differ from Managed Fund Shares in the following important respects. First, in contrast to Managed Fund Shares, which are actively-managed funds listed and traded under NYSE Arca Rule 8.600-E⁵ and for which a "Disclosed

⁴ The Exchange will propose applicable NYSE Arca listing fees for Active Proxy Portfolio Shares in the NYSE Arca Equities Schedule of Fees and Charges via a separate proposed rule change.

⁵ The Commission has previously approved listing and trading on the Exchange of a number of issues of Managed Fund Shares under NYSE Arca Rule 8.600-E. See, e.g., Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR-NYSEArca-2008-31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR-NYSEArca-2009-55) (order approving listing of Dent Tactical ETF); 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR-NYSEArca-2010-79) (order approving Exchange listing and trading of Cambria Global Tactical ETF); 63802 (January 31, 2011), 76 FR 6503 (February 4, 2011) (SR-NYSEArca-2010-118) (order approving Exchange listing and trading of the SiM Dynamic Allocation Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF). The

Portfolio” is required to be disseminated at least once daily,⁶ the portfolio for an issue of Active Proxy Portfolio Shares will be publicly disclosed within at least 60 days following the end of every fiscal quarter in accordance with normal disclosure requirements otherwise applicable to open-end management investment companies registered under the 1940 Act.⁷ The composition of the portfolio of an issue of Active Proxy Portfolio Shares would not be available at commencement of Exchange listing and trading. Second, in connection with the creation and redemption of Active Proxy Portfolio Shares, such creation or redemption may be exchanged for a Proxy Portfolio with a value equal to the next-determined NAV. A series of Active Proxy Portfolio Shares will disclose the Proxy Portfolio on a daily basis, which, as described above, is designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares, instead of the actual holdings of the Investment Company, as provided by a series of Managed Fund Shares.

The Exchange, after consulting with various Lead Market Makers (“LMMs”)⁸ that trade exchange-traded funds (“ETFs”) on the Exchange, believes that market

Commission also has approved a proposed rule change relating to generic listing standards for Managed Fund Shares. Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016 (SR-NYSEArca-2015-110) (amending NYSE Arca Equities Rule 8.600 to adopt generic listing standards for Managed Fund Shares).

⁶ NYSE Arca Rule 8.600-E(c)(2) defines the term “Disclosed Portfolio” as the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of net asset value at the end of the business day. NYSE Arca Rule 8.600-E(d)(2)(B)(i) requires that the Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.

⁷ A mutual fund is required to file with the Commission its complete portfolio schedules for the second and fourth fiscal quarters on Form N-CSR under the 1940 Act. Information reported on Form N-PORT for the third month of a Fund's fiscal quarter will be made publicly available 60 days after the end of a Fund's fiscal quarter. Form N-PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund's Statement of Additional Information, its Shareholder Reports, its Form N-CSR, filed twice a year, and its Form N-CEN, filed annually. A fund's statement of additional information (“SAI”) and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed on-screen or downloaded from the Commission's website at www.sec.gov.

⁸ The term “Lead Market Maker” is defined in Rule 1.1(w) to mean a registered Market Maker that is the exclusive Designated Market Maker in listings for which the Exchange is the primary market.

makers will be able to make efficient and liquid markets priced near the ETF's intraday value, and market makers employ market making techniques such as "statistical arbitrage," including correlation hedging, beta hedging, and dispersion trading, which is currently used throughout the financial services industry, to make efficient markets in exchange-traded products.⁹ For Active Proxy Portfolio Shares, market makers may use the knowledge of a fund's means of achieving its investment objective, as described in the applicable fund registration statement, as well as a fund's disclosed Proxy Portfolio, to construct a hedging proxy for a fund to manage a market maker's quoting risk in connection with trading fund shares. Market makers can then conduct statistical arbitrage between their hedging proxy (for example, the Russell 1000 Index) and shares of a fund, buying and selling one against the other over the course of the trading day. This ability should permit market makers to make efficient markets in an issue of Active Proxy Portfolio Shares without precise knowledge of a fund's underlying portfolio. This is similar to certain other existing exchange-traded products (for example, ETFs that invest in foreign securities that do not trade during U.S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as market makers gain more confidence in their real-time hedges.

Description of the Funds and the Trust

Each Fund will be a series of Natixis ETF Trust II ("Trust"), which will be registered with the Commission as an open-end management investment

⁹ Statistical arbitrage enables a trader to construct an accurate proxy for another instrument, allowing it to hedge the other instrument or buy or sell the instrument when it is cheap or expensive in relation to the proxy. Statistical analysis permits traders to discover correlations based purely on trading data without regard to other fundamental drivers. These correlations are a function of differentials, over time, between one instrument or group of instruments and one or more other instruments. Once the nature of these price deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging proxy has been identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period making corrections where warranted. In the case of correlation hedging, the analysis seeks to find a proxy that matches the pricing behavior of a fund. In the case of beta hedging, the analysis seeks to determine the relationship between the price movement over time of a fund and that of another stock. Dispersion trading is a hedged strategy designed to take advantage of relative value differences in implied volatilities between an index and the component stocks of that index. Such trading strategies will allow market participants to engage in arbitrage between series of Active Proxy Portfolio Shares and other instruments, both through the creation and redemption process and strictly through arbitrage without such processes.

company.¹⁰

Natixis Advisors, L.P. (“Adviser”) will be the investment adviser to the Funds. Harris Associates L.P and Loomis, Sayles & Company are subadvisers (“U.S. Equity Opportunities ETF Subadvisers”) for the Natixis U.S. Equity Opportunities ETF. Vaughan Nelson Investment Management, L.P. is the subadviser for the Natixis Vaughan Nelson Select ETF and Natixis Vaughan Nelson MidCap ETF. (Harris Associates L.P, Loomis, Sayles & Company and Vaughan Nelson Investment Management, L.P. are referred to collectively herein as “Sub-Advisers.”) ALPS Distributors, Inc. will act as the distributor and principal underwriter (“Distributor”) for the Funds.

As noted above, proposed Commentary.04 provides that, if the investment adviser to the Investment Company issuing Active Proxy Portfolio Shares is affiliated with a broker-dealer, such investment adviser will erect and maintain a “fire wall” between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company Actual Portfolio and/or Proxy Portfolio. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's portfolio composition or has access to information regarding the Investment Company's Actual Portfolio and/or Proxy Portfolio or changes thereto must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio and/or Proxy Portfolio. Proposed Commentary .04 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Rule 5.2-E(j)(3); however, Commentary .04, in connection with the establishment of a “fire wall” between the investment adviser and the broker-dealer, reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds.¹¹ Proposed

¹⁰ The Trust is registered under the 1940 Act. On April 24, 2020, the Trust filed a registration statement on Form N-1A under the Securities Act of 1933 (the “1933 Act”) (15 U.S.C. 77a), and under the 1940 Act relating to the Funds (File Nos. 333-235466 and 811-23500) (the “Registration Statement”). The Trust and NYSE Group, Inc. filed a Seventh Amended and Restated Application for an Order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812-14870), dated October 21, 2019 (“Application”). On November 14, 2019, the Commission issued a notice regarding the Application. Investment Company Release No. 33684 (File No. 812-14870). On December 10, 2019, the Commission issued an order (“Exemptive Order”) under the 1940 Act granting the exemptions requested in the Application (Investment Company Act Release No. 33711 (December 10, 2019)). The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statement and the Application.

¹¹ An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Adviser and Sub-Advisers and their related personnel will be subject to the provisions of

Commentary .04 is also similar to Commentary .06 to Rule 8.600-E related to Managed Fund Shares, except that proposed Commentary .04 relates to establishment and maintenance of a “fire wall” between the investment adviser and the broker-dealer applicable to an Investment Company’s Actual Portfolio and/or Proxy Portfolio, and not just to the underlying portfolio, as is the case with Managed Fund Shares. The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer. The Adviser has implemented and will maintain a “fire wall” with respect to such broker-dealer affiliate regarding access to information concerning the composition of and/or changes to a Fund’s Actual Portfolio and/or Proxy Portfolio. Harris Associates L.P., Loomis, Sayles & Company and Vaughan Nelson Investment Management are not registered as a broker-dealer but are affiliated with a broker-dealer. Each of the Sub-Advisers has implemented and will maintain a “fire wall” with respect to its respective broker-dealer affiliate regarding access to information concerning the composition of and/or changes to the applicable Fund’s Actual Portfolio and/or Proxy Portfolio.

In the event (a) the Adviser or a Sub-Adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer, or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Actual Portfolio and/or Proxy Portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio and/or Proxy Portfolio.

The Funds

According to the Application, the Adviser believes a Fund would allow for

Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

efficient trading of Shares through an effective Fund portfolio transparency substitute and publication of related information metrics, while still shielding the identity of the full Fund portfolio contents to protect a Fund's performance-seeking strategies. Even though a Fund would not publish its full portfolio contents daily, the Adviser believes that the NYSE Proxy Portfolio Methodology would allow market participants to assess the intraday value and associated risk of a Fund's Actual Portfolio. As a result, the Adviser believes that investors would be able to purchase and sell Shares in the secondary market at prices that are close to their NAV.

In this regard, the Funds will utilize a proxy portfolio methodology-- the "NYSE Proxy Portfolio Methodology"-- that would allow market participants to assess the intraday value and associated risk of a Fund's Actual Portfolio and thereby facilitate the purchase and sale of Shares by investors in the secondary market at prices that do not vary materially from their NAV.¹² The NYSE Proxy Portfolio Methodology would utilize creation of a Proxy Portfolio for hedging and arbitrage purposes.¹³

Natixis U.S. Equity Opportunities ETF

The Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order and the holdings will be consistent with all requirements in the Application and Exemptive Order.¹⁴ Any foreign common

¹² The NYSE Proxy Portfolio Methodology is owned by the NYSE Group, Inc. and licensed for use by the Fund. NYSE Group, Inc. is not affiliated with the Fund, Adviser or Distributor. Not all series of Active Proxy Portfolio Shares will utilize the NYSE Proxy Portfolio Methodology.

¹³ With respect to the Fund, the Fund will have in place policies and procedures regarding the construction and composition of its Proxy Portfolio. Such policies and procedures will be covered by the Fund's compliance program and other requirements under Rule 38a-1 under the 1940 Act.

¹⁴ Pursuant to the Application and Exemptive Order, the permissible investments for each of the Funds include only the following instruments : ETFs traded on a U.S. exchange; exchange-traded notes ("ETNs") traded on a U.S. exchange; U.S. exchange-traded common stocks; common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Shares ("foreign common stocks") in the Exchange's Core Trading Session (normally 9:30 a.m. and 4:00 p.m. Eastern time ("E.T.")); U.S. exchange-traded preferred stocks; U.S. exchange-traded American Depositary Receipts ("ADRs"); U.S. exchange-traded real estate investment trusts; U.S. exchange-traded commodity pools; U.S. exchange-traded metals trusts; U.S. exchange-traded currency trusts; and U.S. exchange-traded futures that trade contemporaneously with a Fund's Shares. In addition, a Fund may hold cash and cash equivalents (short-term U.S. Treasury securities, government money market funds, and repurchase agreements). The

stocks held by the Fund will be traded on an exchange that is a member of the Intermarket Surveillance Group (“ISG”) or with which the Exchange has in place a comprehensive surveillance sharing agreement.

According to the Registration Statement, the Fund’s investment objective is to seek long-term growth of capital. The Fund, under normal market conditions,¹⁵ will invest at least 80% of its net assets (plus any borrowings made for investment purposes) in equity securities, including exchange-traded common stocks and exchange-traded preferred stocks. Under normal market conditions, the Fund will invest at least 80% of its net assets (plus any borrowings made for investment purposes) in securities of U.S. issuers.

Natixis Vaughan Nelson Select ETF

The Fund’s holdings will conform to the permissible investments as set forth in the Application and Exemptive Order and the holdings will be consistent with all requirements in the Application and Exemptive Order.¹⁶ Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

According to the Registration Statement, the Fund’s investment objective is to seek long-term capital appreciation. The Fund, under normal market conditions, will invest primarily in equity securities, including exchange-traded common stocks, exchange-traded preferred stocks and exchange-traded real estate investment trusts (“REITs”).

Natixis Vaughan Nelson MidCap ETF

The Fund’s holdings will conform to the permissible investments as set forth in the Application and Exemptive Order and the holdings will be consistent with all requirements in the Application and Exemptive Order.¹⁷ Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

According to the Registration Statement, the Fund’s investment objective is to seek long-term capital appreciation. The Fund, under normal market conditions, will invest primarily in companies that, at the time of purchase, have market

Fund will not hold short positions or invest in derivatives other than U.S. exchange-traded futures.

¹⁵ The term "normal market conditions" is defined in proposed Rule 8.601-E(c)(6).

¹⁶ See note 14, supra.

¹⁷ See note 14, supra.

capitalizations either within the capitalization range of the Russell Midcap® Value Index, an unmanaged index that measures the performance of companies with lower price-to-book ratios and lower forecasted growth values within the broader Russell Midcap Index, or of \$15 billion or less. Equity securities may take the form of exchange-traded stock in corporations and exchange-traded REITs or other exchange-traded trusts and similar securities representing direct or indirect ownership interests in business organizations.

Creations and Redemptions of Shares

According to the Registration Statement, the Trust will offer, issue and sell Shares of the Funds to investors only in specified minimum size “Creation Units” through the Distributor on a continuous basis at the NAV per Share next determined after an order in proper form is received. The NAV of a Fund is expected to be determined as of 4:00 p.m. E.T. on each Business Day. The Trust will sell and redeem Creation Units of a Fund only on a Business Day. Creation Units of a Fund may be purchased and/or redeemed entirely for cash, as permissible under the procedures described below.

The “Creation Basket” (as defined below) for a Fund’s Shares will be based on a Fund’s Proxy Portfolio, which is designed to approximate the value and performance of the Actual Portfolio. All Creation Basket instruments will be valued in the same manner as they are valued for purposes of calculating a Fund’s NAV, and such valuation will be made in the same manner regardless of the identity of the purchaser or redeemer. Further, the total consideration paid for the purchase or redemption of a Creation Unit of Shares will be based on the NAV of a Fund, as calculated in accordance with the policies and procedures set forth in the Registration Statement.

According to the Application, Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Accordingly, except where the purchase or redemption will include cash under the circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (“Deposit Instruments”), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (“Redemption Instruments”). The names and quantities of the instruments that constitute the Deposit Instruments and the Redemption Instruments for a Fund (collectively, the “Creation Basket”) will be the same as a Fund’s Proxy Portfolio, except to the extent purchases and redemptions are made entirely or in part on a cash basis.

If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the “Cash Amount”).

While a Fund normally will issue and redeem Shares in kind, a Fund may require purchases and redemptions to be made entirely or in part on a cash basis. In such an instance, a Fund will announce, before the open of trading in the Core Trading Session (normally, 9:30 a.m. to 4:00 p.m. E.T.) on a given Business Day, that all purchases, all redemptions, or all purchases and redemptions on that day will be made wholly or partly in cash. A Fund may also determine, upon receiving a purchase or redemption order from an Authorized Participant, to have the purchase or redemption, as applicable, be made entirely or in part in cash.¹⁸ Each Business Day, before the open of trading on the Exchange, a Fund will cause to be published through the National Securities Clearing Corporation (“NSCC”) the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Amount (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following Business Day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket.

All orders to purchase Creation Units must be placed with the Distributor by or through an Authorized Participant, which is either: (1) a “participating party” (i.e., a broker or other participant), in the Continuous Net Settlement (“CNS”) System of the NSCC, a clearing agency registered with the Commission and affiliated with the Depository Trust Company (“DTC”), or (2) a DTC Participant, which in any case has executed a participant agreement with the Distributor and the transfer agent.

Timing and Transmission of Purchase Orders

All orders to purchase (or redeem) Creation Units, whether using the NSCC Process or the DTC Process, must be received by the Distributor no later than the NAV calculation time (“NAV Calculation Time”), generally 4:00 p.m. E.T. on the date the order is placed (“Transmittal Date”) in order for the purchaser (or redeemer) to receive the NAV determined on the Transmittal Date. In the case of custom orders, the order must be received by the Distributor sufficiently in advance of the NAV Calculation Time in order to help ensure that a Fund has an opportunity to purchase the missing securities with the cash in lieu amounts or to sell securities to generate the cash in lieu amounts prior to the NAV Calculation Time. On days when the Exchange closes earlier than normal, a Fund may require custom orders to be placed earlier in the day.

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The Adviser represents that, to the extent the Trust effects the creation or redemption of Shares in cash on any given day, such transactions will be effected in the same manner for all Authorized Participants placing trades with a Fund on that day.

Daily Disclosures

With respect to the Funds, the following information will comprise the “Proxy Portfolio Disclosures” and will be publicly available on the Funds’ website before the commencement of trading in Shares on each Business Day:

- The Proxy Portfolio holdings (including the identity and quantity of investments in the Proxy Portfolio) will be publicly available on a Fund’s website before the commencement of trading in Shares on each Business Day..
- The historical “Tracking Error” between a Fund’s last published NAV per share and the value, on a per Share basis, of a Fund’s Proxy Portfolio calculated as of the close of trading on the prior Business Day will be publicly available on a Fund’s website before the commencement of trading in Shares each Business Day.
- The “Proxy Overlap” will be publicly available on a Fund’s website before the commencement of trading in Shares on each Business Day. The Proxy Overlap is the percentage weight overlap between the Proxy Portfolio’s holdings compared to the Actual Portfolio’s holdings that formed the basis for a Fund’s calculation of NAV at the end of the prior Business Day. The Proxy Overlap will be calculated by taking the lesser weight of each asset held in common between the Actual Portfolio and the Proxy Portfolio and adding the totals.

Availability of Information

The Funds’ website (www.im.natixis.com), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for a Fund that may be downloaded. The Funds’ website will include on a daily basis, per Share for a Fund, (1) daily trading volume, the prior Business Day’s NAV and the “Closing Price” or “Bid/Ask Price,”¹⁹ and a calculation of the premium/discount of the Closing Price or Bid/Ask Price against such NAV²⁰, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the

¹⁹ The records relating to Bid/Ask Prices will be retained by the Funds or their service providers. The “Bid/Ask Price” is the midpoint of the highest bid and lowest offer based upon the National Best Bid and Offer as of the time of calculation of the Fund’s NAV. The “National Best Bid and Offer” is the current national best bid and national best offer as disseminated by the Consolidated Quotation System or UTP Plan Securities Information Processor. The “Closing Price” of Shares is the official closing price of the Shares on the Exchange.

²⁰ The “premium/discount” refers to the premium or discount to NAV at the end of a trading day and will be calculated based on the last Bid/Ask Price or the Closing Price on a given trading day.

daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. The website and information will be publicly available at no charge.

The Proxy Portfolio holdings (including the identity and quantity of investments in the Proxy Portfolio) will be publicly available on the Funds' website before the commencement of trading in Shares on each Business Day.

Typical mutual fund-style annual, semi-annual and quarterly disclosures contained in a Fund's Commission filings will be provided on the Funds' website on a current basis.²¹ Thus, each Fund will publish the portfolio contents of its Actual Portfolio on a periodic basis, and no less than 60 days after the end of every fiscal quarter.

Investors can also obtain a Fund's SAI, Shareholder Reports, Form N-CSR, N-PORT and Form N-CEN. The prospectus, SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N-CSR, N-PORT, and Form N-CEN may be viewed on-screen or downloaded from the Commission's website. The Exchange also notes that pursuant to its Exemptive Order, the issuer must comply with Regulation Fair Disclosure, which prohibits selective disclosure of any material non-public information.

Information regarding market price and trading volume of the Shares and Proxy Portfolio holdings will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares and Proxy Portfolio holdings will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares, equity securities and ETFs will be available via the Consolidated Tape Association ("CTA") high-speed line or from the exchange on which such securities trade.

Investment Restrictions

The Shares of the Funds will conform to the initial and continued listing criteria under proposed Rule 8.601-E. Each Fund's holdings will be limited to and consistent with permissible holdings as described in the Application and all requirements in the Application and Exemptive Order.²²

Each Fund's investments will be consistent with its investment objective. Each Fund's investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives

²¹ See note 7, supra.

²² See note 10, supra.

and other investments may result in leverage). That is, a Fund's investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2X or -3X) of a Fund's primary broad-based securities benchmark index (as defined in Form N-1A).²³

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of a Fund.²⁴ Trading in Shares of a Fund 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 the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Rule 8.601-E(d)(2)(D), which sets forth circumstances under which Shares of a Fund will be halted.

Specifically, proposed Rule 8.601-E(d)(2)(D) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Active Proxy Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Active Proxy Portfolio Shares inadvisable. These may include: (a) the extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Portfolio and/or Actual Portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. If a series of Active Proxy Portfolio Shares is trading on the Exchange pursuant to unlisted trading privileges, the Exchange shall halt trading in that series as specified in Rule 7.18-E(d)(1). If the Exchange becomes aware that the NAV, Proxy Portfolio or Actual Portfolio with respect to a series of Active Proxy Portfolio Shares is not disseminated to all market participants at the same time, the Exchange shall halt trading in such series until such time as the NAV, Proxy Portfolio or Actual Portfolio is available to all market participants at the same time.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace in all trading sessions in accordance with NYSE Arca Rule 7.34-E(a). As provided in NYSE Arca Rule 7.6-E, the minimum price variation ("MPV") for quoting and entry of

²³ A Fund's broad-based securities benchmark index will be identified in a future amendment to its Registration Statement following a Fund's first full calendar year of performance.

²⁴ See NYSE Arca Rule 7.12-E.

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.

The Shares will conform to the initial and continued listing criteria under proposed NYSE Arca Rule 8.601-E. The Exchange has appropriate rules to facilitate trading in the Shares during all trading sessions.

The Exchange shall establish a minimum number of Shares of a Fund required to be outstanding at the time of commencement of trading on the Exchange. In addition, proposed Rule 8.601-E(d)(1)(B) provides that the Exchange will obtain a representation from the issuer of each series of Active Proxy Portfolio Shares that the NAV per Share will be calculated daily and that the NAV, Proxy Portfolio and the Actual Portfolio will be made available to all market participants at the same time.

With respect to Active Proxy Portfolio Shares, all of the Exchange member obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with Exchange rules and federal securities laws, and the Exchange and the Financial Industry Regulatory Authority, Inc. (“FINRA”) will continue to monitor Exchange members for compliance with such requirements.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.²⁵ The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and underlying exchange-traded

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FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA’s performance under this regulatory services agreement.

instruments with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities and exchange-traded instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.²⁶

The Adviser will make available daily to FINRA and the Exchange the Actual Portfolio of the Fund, upon request, in order to facilitate the performance of the surveillances referred to above.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

As noted above, proposed Commentary .03 to NYSE Arca Rule 8.601-E provides that the Exchange will implement and maintain written surveillance procedures for Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Active Proxy Portfolio Shares. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Active Proxy Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of Active Proxy Portfolio Shares.

The Exchange will utilize its existing procedures to monitor issuer compliance with the requirements of proposed Rule 8.601-E. 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 unusual conditions or circumstances are present that could be detrimental to the maintenance of a fair and orderly market. The Exchange will require from the issuer of Active Proxy Portfolio Shares, upon initial listing and periodically thereafter, a representation that it is in compliance with Rule 8.601-E. The Exchange notes that proposed Commentary .01 to Rule 8.601-E would require an issuer of Active Proxy Portfolio Shares to notify the Exchange of any failure to comply with the continued listing requirements of Rule 8.601-E. In addition, the Exchange will require issuers to represent that they will notify the Exchange of any failure to comply with the terms of applicable exemptive and no-action relief. As part of its surveillance procedures, the Exchange will rely on the foregoing procedures to become aware of any non-compliance with the requirements of Rule 8.601-E

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For a list of the current members of ISG, see www.isgportal.org.

With respect to the Funds, all statements and representations made in this filing regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (“ETP”) Holders in an Information Bulletin (“Bulletin”) of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) the procedures for purchases and redemptions of Shares; (2) NYSE Arca Rule 9.2-E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the Actual Portfolio and Proxy Portfolio will be disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) the requirement that a Fund’s portfolio holdings will be disclosed quarterly, and (6) trading information.

In addition, the Bulletin will reference that a Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. E.T. each trading day.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,²⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁸ in particular, in that 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 a national market system, and, in general, to protect investors and the public interest.

²⁷ 15 U.S.C. 78f(b).

²⁸ 15 U.S.C. 78f(b)(5).

The Exchange believes that proposed Rule 8.601-E is designed to prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading of Active Proxy Portfolio Shares provide specific initial and continued listing criteria required to be met by such securities.²⁹

Proposed Rule 8.601-E (d) sets forth initial and continued listing criteria applicable to Active Proxy Portfolio Shares. Proposed Rule 8.601-E(d)(1)(A) provides that, for each series of Active Proxy Portfolio Shares, the Exchange will establish a minimum number of Active Proxy Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange. In addition, proposed Rule 8.601-E(d)(1)(B) provides that the Exchange will obtain a representation from the issuer of each series of Active Proxy Portfolio Shares that the NAV per share for the series will be calculated daily and that the NAV, Proxy Portfolio and the Actual Portfolio will be made available to all market participants at the same time. Proposed Rule 8.601-E(d)(2) provides that each series of Active Proxy Portfolio Shares will be listed and traded subject to application of specified continued listing criteria, as set forth above.

Proposed Rule 8.601-E(d)(2)(D)(i) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Active Proxy Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Active Proxy Portfolio Shares inadvisable. These may include: (a) the extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Portfolio and/or Actual Portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Proposed Rule 8.601-E(d)(2)(D)(iii) provides that, upon notification to the Exchange by the issuer of a series of Active Proxy Portfolio Shares, that the NAV, Proxy Portfolio or Actual Portfolio with respect to a series of Active Proxy Portfolio Shares is not disseminated to all market participants at the same time, the Exchange shall halt trading in such series until such time as the NAV, Proxy Portfolio or Actual Portfolio is available to all market participants at the same time. The Exchange believes that these proposed halt procedures will help ensure that market participants have fair and uniform access to information regarding a fund's NAV, Proxy Portfolio or Actual Portfolio and, therefore, reduce the potential for manipulation and help ensure a fair and orderly market in trading of Active Proxy Portfolio Shares.

Proposed Commentary .01 to NYSE Arca Rule 8.601-E provides that the Exchange will file separate proposals under Section 19(b) of the Act before the listing and trading of Active Proxy Portfolio Shares. All statements or representations contained in such rule filing regarding (a) the description of the

²⁹

The Exchange represents that, for continued listing, the Funds will be in compliance with Rule 10A-3 under the Act, as provided by NYSE Arca Rule 5.3-E.

portfolio, (b) limitations on portfolio holdings, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements.

Proposed Commentary .03 to NYSE Arca Rule 8.601-E provides that the Exchange will implement and maintain written surveillance procedures for Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will, upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Active Proxy Portfolio Shares.

Proposed Commentary .04 provides that, if the investment adviser to the Investment Company issuing Active Proxy Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a "fire wall" between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company's Actual Portfolio and/or Proxy Portfolio. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's portfolio composition or has access to non-public information regarding the Investment Company's Actual Portfolio or the Proxy Portfolio or changes thereto must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio or to the Proxy Portfolio or changes thereto.

Proposed Commentary .05 provides that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company's Actual Portfolio or the Proxy Portfolio or changes thereto, must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company Actual Portfolio or the Proxy Portfolio or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a "fire wall" between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company Actual Portfolio or Proxy Portfolio.

The Exchange believes proposed Commentary .04 and Commentary .05 will act as a safeguard against any misuse and improper dissemination of non-public information related to a Fund's Actual Portfolio or Proxy Portfolio or changes thereto. The requirement that any person or entity implement procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio or Proxy Portfolio will act to prevent any individual or entity from sharing such information externally and the internal "fire wall" requirements applicable where an entity is a registered broker-dealer or affiliated with a broker-dealer will act to make sure that no entity will be able

to misuse the data for their own purpose. As such, the Exchange believes that this proposal is designed to prevent fraudulent and manipulative acts and practices. The Exchange's proposal to amend current Rule 5.3-E to include Active Proxy Portfolio Shares listed pursuant to proposed Rule 8.601-E among the derivative or special purpose securities that are subject to a limited set of corporate governance and disclosure policies would include Active Proxy Portfolio Shares among the derivative or special purpose securities to which the requirements concerning shareholder/annual meetings do not apply. The proposed addition of Active Proxy Portfolio 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 Active Proxy Portfolio 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).

With respect to the proposed listing and trading of Shares of a Fund, the Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.601-E. Each Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order and the holdings will be consistent with all requirements in the Application and Exemptive Order.³⁰ Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities and exchange-traded instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Exchange, after consulting with various LMMs that trade ETFs on the Exchange, believes that market makers will be able to make efficient and liquid markets priced near the ETF's intraday value, and market makers employ market making techniques such as "statistical arbitrage," including correlation hedging, beta hedging, and dispersion trading, which is currently used throughout the financial services industry, to make efficient markets in exchange-traded

³⁰

See note 14, supra.

products.³¹ For Active Proxy Portfolio Shares, market makers may use the knowledge of a fund's means of achieving its investment objective, as described in the applicable fund registration statement, as well as a fund's disclosed Proxy Portfolio, to construct a hedging proxy for a fund to manage a market maker's quoting risk in connection with trading fund shares. Market makers can then conduct statistical arbitrage between their hedging proxy and shares of a fund, buying and selling one against the other over the course of the trading day. This ability should permit market makers to make efficient markets in an issue of Active Proxy Portfolio Shares without precise knowledge of a fund's underlying portfolio. This is similar to certain other existing exchange-traded products (for example, ETFs that invest in foreign securities that do not trade during U.S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as market makers gain more confidence in their real-time hedges.

The real-time dissemination of the identity and quantity of Proxy Portfolio component investments, together with the right of Authorized Participants to create and redeem each day at the NAV, will be sufficient for market participants to value and trade shares in a manner that will not lead to significant deviations between the Bid/Ask Price and NAV of shares of a series of Active Proxy Portfolio Shares.

The pricing efficiency with respect to trading a series of Active Proxy Portfolio Shares will generally rest on the ability of market participants to arbitrage between the shares and a fund's portfolio, in addition to the ability of market participants to assess a fund's underlying value accurately enough throughout the trading day in order to hedge positions in shares effectively. Professional traders can buy shares that they perceive to be trading at a price less than that which will be available at a subsequent time and sell shares they perceive to be trading at a price higher than that which will be available at a subsequent time. It is expected that, as part of their normal day-to-day trading activity, market makers assigned to shares by the Exchange, off-exchange market makers, firms that specialize in electronic trading, hedge funds and other professionals specializing in short-term, non-fundamental trading strategies will assume the risk of being "long" or "short" shares through such trading and will hedge such risk wholly or partly by simultaneously taking positions in correlated assets³² or by netting the exposure

³¹ See note 9, *supra*.

³² Price correlation trading is used throughout the financial industry. It is used to discover both trading opportunities to be exploited, such as currency pairs and statistical arbitrage, as well as for risk mitigation such as dispersion trading and beta hedging. These correlations are a function of differentials, over time, between one or multiple securities pricing. Once the nature of these price deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging basket has been identified, a trader can minimize portfolio risk by

against other, offsetting trading positions – much as such firms do with existing ETFs and other equities. Disclosure of a fund's investment objective and principal investment strategies in its prospectus and SAI should permit professional investors to engage easily in this type of hedging activity.

The Exchange believes that the Funds and Active Proxy Portfolio Shares generally, will provide investors with a greater choice of active portfolio managers and active strategies through which they can manage their assets in an ETF structure. This greater choice of active asset management is expected to be similar to the diversity of active managers and strategies available to mutual fund investors. Unlike mutual fund investors, investors in Active Proxy Portfolio Shares would also accrue the benefits derived from the ETF structure, such as lower fund costs, tax efficiencies, intraday liquidity, and pricing that reflects current market conditions rather than end-of-day pricing.

The Adviser represents that, unlike ETFs that publish their portfolios on a daily basis, the Fund, as Active Proxy Portfolio Shares, proposes to allow for efficient trading of Shares through an effective Fund portfolio transparency substitute - Proxy Portfolio transparency. The Adviser believes that this approach will provide an important benefit to investors by protecting the Fund from the potential for front-running of portfolio transactions and the potential for free-riding on a Fund's portfolio strategies, each of which could adversely impact the performance of a Fund.

The Funds will utilize the NYSE Proxy Portfolio Methodology, allowing market participants to assess the intraday value and associated risk of a Fund's Actual Portfolio and thereby facilitate the purchase and sale of Shares by investors in the secondary market at prices that do not vary materially from their NAV.

The Exchange believes that Active Proxy Portfolio Shares will provide the platform for many more asset managers to launch ETFs, increasing the investment choices for consumers of actively managed funds, which should lead to a greater competitive landscape that can help to reduce the overall costs of active investment management for retail investors. Unlike mutual funds, Active Proxy Portfolio Shares would be able to use the efficient share settlement system in place for ETFs today, translating into a lower cost of maintaining shareholder accounts and processing transactions.

Each Fund's investments will be consistent with its investment objective. Each Fund's investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, a Fund's investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2X

executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period, making corrections where warranted.

or -3X) of a Fund's primary broad-based securities benchmark index (as defined in Form N-1A).

The Adviser represents that investors will also benefit because a Fund's operating costs, such as transfer agency costs, are generally lower in ETFs than in mutual funds. The Funds will have access to the identical clearing and settlement procedures now used by U.S. domiciled ETFs, and therefore, should experience many of the operational and cost efficiencies benefitting current ETF investors.

The Adviser represents further that in-kind Share creation/redemption orders will allow a Fund to enjoy overall transaction costs lower than those experienced by mutual funds. A Fund's in-kind Share creation and redemption process will facilitate and enhance active management strategies by generally limiting the portfolio manager's need to transact in a large volume of trades in order to maintain desired investment exposures. In addition, the Adviser represents that the Fund will receive tax efficiency benefits of the ETF structure because of in-kind Share creation and redemption activity.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of a series of Active Proxy Portfolio Shares that the NAV per share of a fund will be calculated daily and that the NAV will be made available to all market participants at the same time. With respect to the Funds, investors can also obtain a Fund's SAI, shareholder reports, and its Form N-CSR, Form N-PORT and Form N-CEN. A Fund's SAI and shareholder reports will be available free upon request from a Fund, and those documents and the Form N-CSR, Form N-PORT and Form N-CEN may be viewed on-screen or downloaded from the Commission's website. In addition, with respect to the Funds, a large amount of information will be publicly available regarding a Fund and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares will be available via the CTA high-speed line. The website for the Funds will include a form of the prospectus for a Fund that may be downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis. The Proxy Portfolio holdings (including the identity and quantity of investments in the Proxy Portfolio) will be publicly available on the Funds' website before the commencement of trading in Shares on each Business Day.

Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12-E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Rule 8.601-E (d)(2)(D), which sets forth circumstances under which Shares of a Fund will be halted. In addition, as noted above, investors will have ready access to quotation and last sale information for the Shares. The Shares

will conform to the initial and continued listing criteria under proposed Rule 8.601-E.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding quotation and last sale information for the Shares.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change would permit listing and trading of another type of actively-managed ETF that has characteristics different from existing actively-managed and index ETFs and would introduce additional competition among various ETF products to the benefit of investors.

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 any 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 Federal Register

Exhibit 5—Text of Proposed Rule Change

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NYSEARCA-2019-95, Amendment No. 3)

[Date]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to Adopt New NYSE Arca Rule 8.601-E to Permit Listing and Trading of Active Proxy Portfolio Shares and Shares of the Natixis ETFs

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 May 19, 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 to adopt new NYSE Arca Rule 8.601-E to permit it to list and trade Active Proxy Portfolio Shares, which are shares of actively managed exchange-traded funds for which the portfolio is disclosed in accordance with standard mutual fund disclosure rules. In addition, the Exchange proposes to list and trade shares of the following under proposed NYSE Arca Rule 8.601-E: Natixis U.S. Equity Opportunities ETF, Natixis Vaughan Nelson Select ETF and Natixis Vaughan Nelson MidCap ETF.

This Amendment No. 3 to SR-NYSEArca-2019-95 replaces SR-NYSEArca-2019-95 as

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

originally filed and Amendment 2 thereto and supersedes such filings in their entirety.

The Exchange has withdrawn Amendment No. 1 to SR-NYSEArca-2019-95. 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 to add new NYSE Arca Rule 8.601-E for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges ("UTP"), of Active Proxy Portfolio Shares, which are securities issued by an actively managed open-end investment management company. The Exchange also proposes to list and trade shares ("Shares") of the following under proposed NYSE Arca Rule 8.601-E: Natixis U.S. Equity Opportunities ETF, Natixis Vaughan Nelson Select ETF and Natixis Vaughan Nelson MidCap ETF (each a "Fund" and, collectively, "Funds").

Proposed Listing Rules

Proposed Rule 8.601-E (a) provides that the Exchange will consider for trading, whether by listing or pursuant to UTP, Active Proxy Portfolio Shares that meet the criteria of Rule 8.601-E.

Proposed Rule 8.601-E (b) provides that Rule 8.601-E is applicable only to Active Proxy Portfolio Shares and that, except to the extent inconsistent with Rule 8.601-E, or unless the context otherwise requires, the rules and procedures of the Exchange's Board of Directors shall be applicable to the trading on the Exchange of such securities. Proposed Rule 8.601-E (b) provides further that Active Proxy Portfolio Shares are included within the definition of "security" or "securities" as such terms are used in the Rules of the Exchange.

Proposed Rule 8.601-E(c)(1) defines the "Active Proxy Portfolio Share" as a security that (a) is issued by an investment company registered under the Investment Company Act of 1940 ("Investment Company") organized as an open-end management investment company that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a specified minimum number of shares, or multiples thereof, in return for a deposit by the purchaser of the Proxy Portfolio and/or cash with a value equal to the next determined net asset value ("NAV"); (c) when aggregated in the same specified minimum number of Active Proxy Portfolio Shares, or multiples thereof, may be redeemed at a holder's request in return for the Proxy Portfolio and/or cash to the holder by the issuer with a value equal to the next determined NAV; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

Proposed Rule 8.601-E(c)(2) defines the term "Actual Portfolio" as the identities and quantities of the securities and other assets held by the Investment Company that shall form the basis for the Investment Company's calculation of NAV at the end of the

business day.

Proposed Rule 8.601-E(c)(3) defines the term “Proxy Portfolio” as a specified portfolio of securities, other financial instruments and/or cash designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series. The website for each series of Active Proxy Portfolio Shares shall disclose the information regarding the Proxy Portfolio as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series, including the following, to the extent applicable:

- (i) Ticker symbol;
- (ii) CUSIP or other identifier;
- (iii) Description of holding;
- (iv) Quantity of each security or other asset held; and
- (v) Percentage weighting of the holding in the portfolio.⁴

⁴ The information required in proposed Rule 8.601-E(c)(3) for the Proxy Portfolio is the same as that required in SEC Rule 6c-11(c)(1)(i)(A) through (E) under the 1940 Act for exchange-traded funds operating in compliance with Rule 6c-11. 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”). The Exchange believes it is appropriate to require such information, rather than all information required under Rule 8.600-E(c)(2). In adopting this requirement for funds operating in compliance with Rule 6c-11, the Commission stated that “a more streamlined requirement will provide standardized portfolio holdings disclosure in a more efficient, less costly, and less burdensome format, while still providing market participants with relevant information. Accordingly, rule 6c-11 will require an ETF to post a subset of the information required by the listing exchanges’ current generic listing standards for actively managed ETFs.” The Commission stated further that “this framework will provide market participants with the information necessary to support an effective arbitrage mechanism and eliminate potential investor confusion due to a lack of standardization.” See Rule 6c-11 Release, notes 249-260 and accompanying text.

Proposed Rule 8.601-E(c)(4) defines the term “Reporting Authority” in respect of a particular series of Active Proxy Portfolio Shares as the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Active Proxy Portfolio 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, NAV, the Actual Portfolio, Proxy Portfolio, or other information relating to the issuance, redemption or trading of Active Proxy Portfolio Shares. A series of Active Proxy Portfolio Shares may have more than one Reporting Authority, each having different functions.

Proposed Rule 8.601-E(c)(5) defines the term "normal market conditions" as including, but not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

Proposed Rule 8.601-E (d) sets forth initial and continued listing criteria applicable to Active Proxy Portfolio Shares. Proposed Rule 8.601-E(d)(1) provides that each series of Active Proxy Portfolio Shares shall be listed and traded on the Exchange subject to application of the following criteria:

(A) For each series, the Exchange shall establish a minimum number of Active Proxy Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange.

(B) The Exchange shall obtain a representation from the issuer of each series of Active Proxy Portfolio Shares that the NAV per share for the series shall be calculated daily and that the NAV, the Proxy Portfolio, and the Actual Portfolio shall be made publicly available to all market participants at the same time.

(C) All Active Proxy Portfolio Shares shall have a stated investment objective, which shall be adhered to under normal market conditions.

Proposed Rule 8.601-E(d)(2) provides that each series of Active Proxy Portfolio Shares shall be listed and traded subject to application of the following continued listing criteria: the Actual Portfolio shall be disseminated at least 60 days following the end of every fiscal quarter and shall be made publicly available to all market participants at the same time (proposed Rule 8.601-E(d)(2)(A)(i)), and the Proxy Portfolio will be made publicly available on the website for each series of Active Proxy Portfolio Shares at least once daily and will be made available to all market participants at the same time (proposed Rule 8.601-E(d)(2)(B)(i)).

Proposed Rule 8.601-E(d)(2)(C) provides that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 5.5-E(m) for, a series of Active Proxy Portfolio Shares under any of the following circumstances:

(i) if any of the continued listing requirements set forth in Rule 8.601-E are not continuously maintained;

(ii) if either the Proxy Portfolio or Actual Portfolio is not made available to all market participants at the same time;

(iii) if, following the initial twelve month period after commencement of trading on the Exchange of a series of Active Proxy Portfolio Shares, there are fewer than 50 beneficial holders of such series of Active Proxy Portfolio Shares;

(iv) if the Exchange is notified, or otherwise becomes aware, that the Investment Company is not in compliance with the conditions of any currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to a series of Active Proxy Portfolio Shares;

(v) if any of the statements or representations regarding (a) the description of the portfolio, (b) limitations on portfolio holdings, or (c) the applicability of Exchange listing rules, specified in the Exchange's rule filing pursuant to Section 19(b) of the Act to permit the listing and trading of a series of Active Proxy Portfolio Shares, is not continuously maintained; or

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

Proposed Rule 8.601-E(d)(2)(D) (Trading Halt) provides that (i) The Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Active Proxy Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Active Proxy Portfolio Shares inadvisable. These may include: (a) the extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Portfolio and/or Actual Portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present; (ii) If a series of Active Proxy Portfolio Shares is trading on the Exchange pursuant to unlisted trading

privileges, the Exchange shall halt trading in that series as specified in Rule 7.18-E(d)(1); and (iii) If the Exchange becomes aware that the NAV, Proxy Portfolio or Actual Portfolio with respect to a series of Active Proxy Portfolio Shares is not disseminated to all market participants at the same time, the Exchange shall halt trading in such series until such time as the NAV, Proxy Portfolio or Actual Portfolio is available to all market participants at the same time.

Proposed Rule 8.601-E(d)(2)(E) provides that, upon termination of an Investment Company, the Exchange requires that Active Proxy Portfolio Shares issued in connection with such entity be removed from Exchange listing.

Proposed Rule 8.601-E(d)(2)(F) provides that voting rights shall be as set forth in the applicable Investment Company prospectus.

Proposed Rule 8.601-E(e) (Limitation of Exchange Liability) provides that neither the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a 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 portfolio value; the current value of the portfolio of securities required to be deposited to the Investment Company in connection with issuance of Active Proxy Portfolio Shares; the amount of any dividend equivalent payment or cash distribution to holders of Active Proxy Portfolio Shares; NAV; or other information relating to the purchase, redemption, or trading of Active Proxy Portfolio Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a 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, when the Exchange is acting in the capacity of a 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.

Proposed Commentary .01 to Rule 8.601-E provides that the Exchange will file separate proposals under Section 19(b) of the Act before the listing and trading of a series of Active Proxy Portfolio Shares. All statements or representations contained in such rule filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements.

Proposed Commentary .02 provides that transactions in Active Proxy Portfolio Shares shall occur during the trading hours specified in NYSE Arca Rule 7.34-E(a).

Proposed Commentary .03 provides that the Exchange will implement and maintain written surveillance procedures for Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Active Proxy Portfolio Shares.

Proposed Commentary.04 provides that, if the investment adviser to the Investment Company issuing Active Proxy Portfolio Shares is registered as a broker-

dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a “fire wall” between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company’s Actual Portfolio and/or Proxy Portfolio. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's portfolio composition or has access to non-public information regarding the Investment Company’s Actual Portfolio or the Proxy Portfolio or changes thereto must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio or the Proxy Portfolio or changes thereto.⁵

Proposed Commentary .05 provides that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company’s Actual Portfolio or the Proxy Portfolio or changes thereto, must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company Actual Portfolio or the Proxy Portfolio or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a “fire wall” between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company Actual Portfolio or Proxy Portfolio.

⁵ The Exchange will propose applicable NYSE Arca listing fees for Active Proxy Portfolio Shares in the NYSE Arca Equities Schedule of Fees and Charges via a separate proposed rule change.

The Exchange also proposes non-substantive amendments to include Active Proxy Portfolio Shares in other Exchange rules. Specifically, the Exchange proposes to amend current Rule 5.3-E to include Active Proxy Portfolio Shares listed pursuant to proposed Rule 8.601-E among the derivative or special purpose securities that are subject to a limited set of corporate governance and disclosure policies. Similarly, the Exchange proposes to amend Rule 5.3-E(e) to include Active Proxy Portfolio Shares listed pursuant to proposed Rule 8.601-E among the derivative or special purpose securities to which the requirements concerning shareholder/annual meetings do not apply.

Key Features of Active Proxy Portfolio Shares

While funds issuing Active Proxy Portfolio Shares will be actively-managed and, to that extent, will be similar to Managed Fund Shares, Active Proxy Portfolio Shares differ from Managed Fund Shares in the following important respects. First, in contrast to Managed Fund Shares, which are actively-managed funds listed and traded under NYSE Arca Rule 8.600-E⁶ and for which a “Disclosed Portfolio” is required to be disseminated

⁶ The Commission has previously approved listing and trading on the Exchange of a number of issues of Managed Fund Shares under NYSE Arca Rule 8.600-E. See, e.g., Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR-NYSEArca-2008-31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR-NYSEArca-2009-55) (order approving listing of Dent Tactical ETF); 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR-NYSEArca-2010-79) (order approving Exchange listing and trading of Cambria Global Tactical ETF); 63802 (January 31, 2011), 76 FR 6503 (February 4, 2011) (SR-NYSEArca-2010-118) (order approving Exchange listing and trading of the SiM Dynamic Allocation Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF). The Commission also has approved a proposed rule change relating to generic listing standards for Managed Fund Shares. Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016) (SR-NYSEArca-2015-110) (amending NYSE

at least once daily,⁷ the portfolio for an issue of Active Proxy Portfolio Shares will be publicly disclosed within at least 60 days following the end of every fiscal quarter in accordance with normal disclosure requirements otherwise applicable to open-end management investment companies registered under the 1940 Act.⁸ The composition of the portfolio of an issue of Active Proxy Portfolio Shares would not be available at commencement of Exchange listing and trading. Second, in connection with the creation and redemption of Active Proxy Portfolio Shares, such creation or redemption may be exchanged for a Proxy Portfolio with a value equal to the next-determined NAV. A series of Active Proxy Portfolio Shares will disclose the Proxy Portfolio on a daily basis, which, as described above, is designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares, instead of the actual holdings of the Investment Company, as provided by a series of Managed Fund Shares.

Arca Equities Rule 8.600 to adopt generic listing standards for Managed Fund Shares).

⁷ NYSE Arca Rule 8.600-E(c)(2) defines the term “Disclosed Portfolio” as the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company’s calculation of net asset value at the end of the business day. NYSE Arca Rule 8.600-E(d)(2)(B)(i) requires that the Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.

⁸ A mutual fund is required to file with the Commission its complete portfolio schedules for the second and fourth fiscal quarters on Form N-CSR under the 1940 Act. Information reported on Form N-PORT for the third month of a Fund’s fiscal quarter will be made publicly available 60 days after the end of a Fund’s fiscal quarter. Form N-PORT requires reporting of a fund’s complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund’s Statement of Additional Information, its Shareholder Reports, its Form N-CSR, filed twice a year, and its Form N-CEN, filed annually. A fund’s statement of additional information (“SAI”) and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed on-screen or downloaded from the Commission’s website at www.sec.gov.

The Exchange, after consulting with various Lead Market Makers (“LMMs”)⁹ that trade exchange-traded funds (“ETFs”) on the Exchange, believes that market makers will be able to make efficient and liquid markets priced near the ETF’s intraday value, and market makers employ market making techniques such as “statistical arbitrage,” including correlation hedging, beta hedging, and dispersion trading, which is currently used throughout the financial services industry, to make efficient markets in exchange-traded products.¹⁰ For Active Proxy Portfolio Shares, market makers may use the knowledge of a fund’s means of achieving its investment objective, as described in the applicable fund registration statement, as well as a fund’s disclosed Proxy Portfolio, to construct a hedging proxy for a fund to manage a market maker’s quoting risk in connection with trading fund shares. Market makers can then conduct statistical arbitrage between their hedging proxy

⁹ The term “Lead Market Maker” is defined in Rule 1.1(w) to mean a registered Market Maker that is the exclusive Designated Market Maker in listings for which the Exchange is the primary market.

¹⁰ Statistical arbitrage enables a trader to construct an accurate proxy for another instrument, allowing it to hedge the other instrument or buy or sell the instrument when it is cheap or expensive in relation to the proxy. Statistical analysis permits traders to discover correlations based purely on trading data without regard to other fundamental drivers. These correlations are a function of differentials, over time, between one instrument or group of instruments and one or more other instruments. Once the nature of these price deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging proxy has been identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period making corrections where warranted. In the case of correlation hedging, the analysis seeks to find a proxy that matches the pricing behavior of a fund. In the case of beta hedging, the analysis seeks to determine the relationship between the price movement over time of a fund and that of another stock. Dispersion trading is a hedged strategy designed to take advantage of relative value differences in implied volatilities between an index and the component stocks of that index. Such trading strategies will allow market participants to engage in arbitrage between series of Active Proxy Portfolio Shares and other instruments, both through the creation and redemption process and strictly through arbitrage without such processes.

(for example, the Russell 1000 Index) and shares of a fund, buying and selling one against the other over the course of the trading day. This ability should permit market makers to make efficient markets in an issue of Active Proxy Portfolio Shares without precise knowledge of a fund's underlying portfolio. This is similar to certain other existing exchange-traded products (for example, ETFs that invest in foreign securities that do not trade during U.S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as market makers gain more confidence in their real-time hedges.

Description of the Funds and the Trust

Each Fund will be a series of Natixis ETF Trust II ("Trust"), which will be registered with the Commission as an open-end management investment company.¹¹

Natixis Advisors, L.P. ("Adviser") will be the investment adviser to the Funds. Harris Associates L.P. and Loomis, Sayles & Company are subadvisers ("U.S. Equity Opportunities ETF Subadvisers") for the Natixis U.S. Equity Opportunities ETF. Vaughan Nelson Investment Management, L.P. is the subadviser for the Natixis Vaughan Nelson Select ETF and Natixis Vaughan Nelson MidCap ETF. (Harris Associates L.P.,

¹¹ The Trust is registered under the 1940 Act. On April 24, 2020, the Trust filed a registration statement on Form N-1A under the Securities Act of 1933 (the "1933 Act") (15 U.S.C. 77a), and under the 1940 Act relating to the Funds (File Nos. 333-235466 and 811-23500) (the "Registration Statement"). The Trust and NYSE Group, Inc. filed a Seventh Amended and Restated Application for an Order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812-14870), dated October 21, 2019 ("Application"). On November 14, 2019, the Commission issued a notice regarding the Application. Investment Company Release No. 33684 (File No. 812-14870). On December 10, 2019, the Commission issued an order ("Exemptive Order") under the 1940 Act granting the exemptions requested in the Application (Investment Company Act Release No. 33711 (December 10, 2019)). The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statement and the Application.

Loomis, Sayles & Company and Vaughan Nelson Investment Management, L.P. are referred to collectively herein as “Sub-Advisers.”) ALPS Distributors, Inc. will act as the distributor and principal underwriter (“Distributor”) for the Funds.

As noted above, proposed Commentary .04 provides that, if the investment adviser to the Investment Company issuing Active Proxy Portfolio Shares is affiliated with a broker-dealer, such investment adviser will erect and maintain a “fire wall” between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company Actual Portfolio and/or Proxy Portfolio. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's portfolio composition or has access to information regarding the Investment Company's Actual Portfolio and/or Proxy Portfolio or changes thereto must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio and/or Proxy Portfolio. Proposed Commentary .04 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Rule 5.2-E(j)(3); however, Commentary .04, in connection with the establishment of a “fire wall” between the investment adviser and the broker-dealer, reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds.¹² Proposed Commentary .04 is also similar to

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An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Adviser and Sub-Advisers and their related personnel will be subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse

Commentary .06 to Rule 8.600-E related to Managed Fund Shares, except that proposed Commentary .04 relates to establishment and maintenance of a “fire wall” between the investment adviser and the broker-dealer applicable to an Investment Company’s Actual Portfolio and/or Proxy Portfolio, and not just to the underlying portfolio, as is the case with Managed Fund Shares. The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer. The Adviser has implemented and will maintain a “fire wall” with respect to such broker-dealer affiliate regarding access to information concerning the composition of and/or changes to a Fund’s Actual Portfolio and/or Proxy Portfolio. Harris Associates L.P., Loomis, Sayles & Company and Vaughan Nelson Investment Management are not registered as a broker-dealer but are affiliated with a broker-dealer. Each of the Sub-Advisers has implemented and will maintain a “fire wall” with respect to its respective broker-dealer affiliate regarding access to information concerning the composition of and/or changes to the applicable Fund’s Actual Portfolio and/or Proxy Portfolio.

In the event (a) the Adviser or a Sub-Adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer, or becomes affiliated with a broker-dealer, it will

of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

implement and maintain a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Actual Portfolio and/or Proxy Portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio and/or Proxy Portfolio.

The Funds

According to the Application, the Adviser believes a Fund would allow for efficient trading of Shares through an effective Fund portfolio transparency substitute and publication of related information metrics, while still shielding the identity of the full Fund portfolio contents to protect a Fund's performance-seeking strategies. Even though a Fund would not publish its full portfolio contents daily, the Adviser believes that the NYSE Proxy Portfolio Methodology would allow market participants to assess the intraday value and associated risk of a Fund's Actual Portfolio. As a result, the Adviser believes that investors would be able to purchase and sell Shares in the secondary market at prices that are close to their NAV.

In this regard, the Funds will utilize a proxy portfolio methodology-- the "NYSE Proxy Portfolio Methodology"-- that would allow market participants to assess the intraday value and associated risk of a Fund's Actual Portfolio and thereby facilitate the purchase and sale of Shares by investors in the secondary market at prices that do not vary materially from their NAV.¹³ The NYSE Proxy Portfolio Methodology would utilize creation of a Proxy Portfolio for hedging and arbitrage purposes.¹⁴

¹³ The NYSE Proxy Portfolio Methodology is owned by the NYSE Group, Inc. and licensed for use by the Fund. NYSE Group, Inc. is not affiliated with the Fund,

Natixis U.S. Equity Opportunities ETF

The Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order and the holdings will be consistent with all requirements in the Application and Exemptive Order.¹⁵ Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the Intermarket Surveillance Group ("ISG") or with which the Exchange has in place a comprehensive surveillance sharing agreement.

According to the Registration Statement, the Fund's investment objective is to seek long-term growth of capital. The Fund, under normal market conditions,¹⁶ will invest at least 80% of its net assets (plus any borrowings made for investment purposes) in equity securities, including exchange-traded common stocks and exchange-traded

Adviser or Distributor. Not all series of Active Proxy Portfolio Shares will utilize the NYSE Proxy Portfolio Methodology.

¹⁴ With respect to the Fund, the Fund will have in place policies and procedures regarding the construction and composition of its Proxy Portfolio. Such policies and procedures will be covered by the Fund's compliance program and other requirements under Rule 38a-1 under the 1940 Act.

¹⁵ Pursuant to the Application and Exemptive Order, the permissible investments for each of the Funds include only the following instruments : ETFs traded on a U.S. exchange; exchange-traded notes ("ETNs") traded on a U.S. exchange; U.S. exchange-traded common stocks; common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Shares ("foreign common stocks") in the Exchange's Core Trading Session (normally 9:30 a.m. and 4:00 p.m. Eastern time ("E.T.")); U.S. exchange-traded preferred stocks; U.S. exchange-traded American Depositary Receipts ("ADRs"); U.S. exchange-traded real estate investment trusts; U.S. exchange-traded commodity pools; U.S. exchange-traded metals trusts; U.S. exchange-traded currency trusts; and U.S. exchange-traded futures that trade contemporaneously with a Fund's Shares. In addition, a Fund may hold cash and cash equivalents (short-term U.S. Treasury securities, government money market funds, and repurchase agreements). The Fund will not hold short positions or invest in derivatives other than U.S. exchange-traded futures.

¹⁶ The term "normal market conditions" is defined in proposed Rule 8.601-E(c)(6).

preferred stocks. Under normal market conditions, the Fund will invest at least 80% of its net assets (plus any borrowings made for investment purposes) in securities of U.S. issuers.

Natixis Vaughan Nelson Select ETF

The Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order and the holdings will be consistent with all requirements in the Application and Exemptive Order.¹⁷ Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

According to the Registration Statement, the Fund's investment objective is to seek long-term capital appreciation. The Fund, under normal market conditions, will invest primarily in equity securities, including exchange-traded common stocks, exchange-traded preferred stocks and exchange-traded real estate investment trusts ("REITs").

Natixis Vaughan Nelson MidCap ETF

The Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order and the holdings will be consistent with all requirements in the Application and Exemptive Order.¹⁸ Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

According to the Registration Statement, the Fund's investment objective is to seek long-term capital appreciation. The Fund, under normal market conditions, will

¹⁷ See note 15, supra.

¹⁸ See note 15, supra.

invest primarily in companies that, at the time of purchase, have market capitalizations either within the capitalization range of the Russell Midcap® Value Index, an unmanaged index that measures the performance of companies with lower price-to-book ratios and lower forecasted growth values within the broader Russell Midcap Index, or of \$15 billion or less. Equity securities may take the form of exchange-traded stock in corporations and exchange-traded REITs or other exchange-traded trusts and similar securities representing direct or indirect ownership interests in business organizations.

Creations and Redemptions of Shares

According to the Registration Statement, the Trust will offer, issue and sell Shares of the Funds to investors only in specified minimum size “Creation Units” through the Distributor on a continuous basis at the NAV per Share next determined after an order in proper form is received. The NAV of a Fund is expected to be determined as of 4:00 p.m. E.T. on each Business Day. The Trust will sell and redeem Creation Units of a Fund only on a Business Day. Creation Units of a Fund may be purchased and/or redeemed entirely for cash, as permissible under the procedures described below.

The “Creation Basket” (as defined below) for a Fund’s Shares will be based on a Fund’s Proxy Portfolio, which is designed to approximate the value and performance of the Actual Portfolio. All Creation Basket instruments will be valued in the same manner as they are valued for purposes of calculating a Fund’s NAV, and such valuation will be made in the same manner regardless of the identity of the purchaser or redeemer. Further, the total consideration paid for the purchase or redemption of a Creation Unit of Shares will be based on the NAV of a Fund, as calculated in accordance with the policies and procedures set forth in the Registration Statement.

According to the Application, Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Accordingly, except where the purchase or redemption will include cash under the circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (“Deposit Instruments”), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (“Redemption Instruments”). The names and quantities of the instruments that constitute the Deposit Instruments and the Redemption Instruments for a Fund (collectively, the “Creation Basket”) will be the same as a Fund’s Proxy Portfolio, except to the extent purchases and redemptions are made entirely or in part on a cash basis.

If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the “Cash Amount”).

While a Fund normally will issue and redeem Shares in kind, a Fund may require purchases and redemptions to be made entirely or in part on a cash basis. In such an instance, a Fund will announce, before the open of trading in the Core Trading Session (normally, 9:30 a.m. to 4:00 p.m. E.T.) on a given Business Day, that all purchases, all redemptions, or all purchases and redemptions on that day will be made wholly or partly in cash. A Fund may also determine, upon receiving a purchase or redemption order from an Authorized Participant, to have the purchase or redemption, as applicable, be made entirely or in part in cash.¹⁹ Each Business Day, before the open of trading on the

¹⁹ The Adviser represents that, to the extent the Trust effects the creation or

Exchange, a Fund will cause to be published through the National Securities Clearing Corporation (“NSCC”) the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Amount (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following Business Day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket.

All orders to purchase Creation Units must be placed with the Distributor by or through an Authorized Participant, which is either: (1) a “participating party” (i.e., a broker or other participant), in the Continuous Net Settlement (“CNS”) System of the NSCC, a clearing agency registered with the Commission and affiliated with the Depository Trust Company (“DTC”), or (2) a DTC Participant, which in any case has executed a participant agreement with the Distributor and the transfer agent.

Timing and Transmission of Purchase Orders

All orders to purchase (or redeem) Creation Units, whether using the NSCC Process or the DTC Process, must be received by the Distributor no later than the NAV calculation time (“NAV Calculation Time”), generally 4:00 p.m. E.T. on the date the order is placed (“Transmittal Date”) in order for the purchaser (or redeemer) to receive the NAV determined on the Transmittal Date. In the case of custom orders, the order must be received by the Distributor sufficiently in advance of the NAV Calculation Time in order to help ensure that a Fund has an opportunity to purchase the missing securities with the cash in lieu amounts or to sell securities to generate the cash in lieu amounts prior to the

redemption of Shares in cash on any given day, such transactions will be effected in the same manner for all Authorized Participants placing trades with a Fund on that day.

NAV Calculation Time. On days when the Exchange closes earlier than normal, a Fund may require custom orders to be placed earlier in the day.

Daily Disclosures

With respect to the Funds, the following information will comprise the “Proxy Portfolio Disclosures” and will be publicly available on the Funds’ website before the commencement of trading in Shares on each Business Day:

- The Proxy Portfolio holdings (including the identity and quantity of investments in the Proxy Portfolio) will be publicly available on a Fund’s website before the commencement of trading in Shares on each Business Day.
- The historical “Tracking Error” between a Fund’s last published NAV per share and the value, on a per Share basis, of a Fund’s Proxy Portfolio calculated as of the close of trading on the prior Business Day will be publicly available on a Fund’s website before the commencement of trading in Shares each Business Day.
- The “Proxy Overlap” will be publicly available on a Fund’s website before the commencement of trading in Shares on each Business Day. The Proxy Overlap is the percentage weight overlap between the Proxy Portfolio’s holdings compared to the Actual Portfolio’s holdings that formed the basis for a Fund’s calculation of NAV at the end of the prior Business Day. The Proxy Overlap will be calculated by taking the lesser weight of each asset held in common between the Actual Portfolio and the Proxy Portfolio and adding the totals.

Availability of Information

The Funds' website (www.im.natixis.com), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for a Fund that may be downloaded. The Funds' website will include on a daily basis, per Share for a Fund, (1) daily trading volume, the prior Business Day's NAV and the "Closing Price" or "Bid/Ask Price,"²⁰ and a calculation of the premium/discount of the Closing Price or Bid/Ask Price against such NAV²¹, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. The website and information will be publicly available at no charge.

The Proxy Portfolio holdings (including the identity and quantity of investments in the Proxy Portfolio) will be publicly available on the Funds' website before the commencement of trading in Shares on each Business Day.

Typical mutual fund-style annual, semi-annual and quarterly disclosures contained in a Fund's Commission filings will be provided on the Funds' website on a current basis.

²² Thus, each Fund will publish the portfolio contents of its Actual Portfolio on a periodic basis, and no less than 60 days after the end of every fiscal quarter.

²⁰ The records relating to Bid/Ask Prices will be retained by the Funds or their service providers. The "Bid/Ask Price" is the midpoint of the highest bid and lowest offer based upon the National Best Bid and Offer as of the time of calculation of the Fund's NAV. The "National Best Bid and Offer" is the current national best bid and national best offer as disseminated by the Consolidated Quotation System or UTP Plan Securities Information Processor. The "Closing Price" of Shares is the official closing price of the Shares on the Exchange.

²¹ The "premium/discount" refers to the premium or discount to NAV at the end of a trading day and will be calculated based on the last Bid/Ask Price or the Closing Price on a given trading day.

²² See note 8, supra.

Investors can also obtain a Fund's SAI, Shareholder Reports, Form N-CSR, N-PORT and Form N-CEN. The prospectus, SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N-CSR, N-PORT, and Form N-CEN may be viewed on-screen or downloaded from the Commission's website. The Exchange also notes that pursuant to its Exemptive Order, the issuer must comply with Regulation Fair Disclosure, which prohibits selective disclosure of any material non-public information.

Information regarding market price and trading volume of the Shares and Proxy Portfolio holdings will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares and Proxy Portfolio holdings will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares, equity securities and ETFs will be available via the Consolidated Tape Association ("CTA") high-speed line or from the exchange on which such securities trade.

Investment Restrictions

The Shares of the Funds will conform to the initial and continued listing criteria under proposed Rule 8.601-E. Each Fund's holdings will be limited to and consistent with permissible holdings as described in the Application and all requirements in the Application and Exemptive Order.²³

Each Fund's investments will be consistent with its investment objective. Each

²³ See note 11, supra.

Fund's investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, a Fund's investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2X or -3X) of a Fund's primary broad-based securities benchmark index (as defined in Form N-1A).²⁴

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of a Fund.²⁵ Trading in Shares of a Fund 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 the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Rule 8.601-E(d)(2)(D), which sets forth circumstances under which Shares of a Fund will be halted.

Specifically, proposed Rule 8.601-E(d)(2)(D) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Active Proxy Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Active Proxy Portfolio Shares inadvisable. These may include: (a) the extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Portfolio and/or Actual Portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. If a series of Active Proxy

²⁴ A Fund's broad-based securities benchmark index will be identified in a future amendment to its Registration Statement following a Fund's first full calendar year of performance.

²⁵ See NYSE Arca Rule 7.12-E.

Portfolio Shares is trading on the Exchange pursuant to unlisted trading privileges, the Exchange shall halt trading in that series as specified in Rule 7.18-E(d)(1). If the Exchange becomes aware that the NAV, Proxy Portfolio or Actual Portfolio with respect to a series of Active Proxy Portfolio Shares is not disseminated to all market participants at the same time, the Exchange shall halt trading in such series until such time as the NAV, Proxy Portfolio or Actual Portfolio is available to all market participants at the same time.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace in all trading sessions in accordance with NYSE Arca Rule 7.34-E(a). 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.

The Shares will conform to the initial and continued listing criteria under proposed NYSE Arca Rule 8.601-E. The Exchange has appropriate rules to facilitate trading in the Shares during all trading sessions.

The Exchange shall establish a minimum number of Shares of a Fund required to be outstanding at the time of commencement of trading on the Exchange. In addition, proposed Rule 8.601-E(d)(1)(B) provides that the Exchange will obtain a representation from the issuer of each series of Active Proxy Portfolio Shares that the NAV per Share will be calculated daily and that the NAV, Proxy Portfolio and the Actual Portfolio will be

made available to all market participants at the same time.

With respect to Active Proxy Portfolio Shares, all of the Exchange member obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with Exchange rules and federal securities laws, and the Exchange and the Financial Industry Regulatory Authority, Inc. (“FINRA”) will continue to monitor Exchange members for compliance with such requirements.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.²⁶ The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and underlying exchange-traded instruments with

²⁶ FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA’s performance under this regulatory services agreement.

other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities and exchange-traded instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.²⁷

The Adviser will make available daily to FINRA and the Exchange the Actual Portfolio of the Fund, upon request, in order to facilitate the performance of the surveillances referred to above.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

As noted above, proposed Commentary .03 to NYSE Arca Rule 8.601-E provides that the Exchange will implement and maintain written surveillance procedures for Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Active Proxy Portfolio Shares. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Active Proxy Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of Active Proxy Portfolio Shares.

²⁷ For a list of the current members of ISG, see www.isgportal.org.

The Exchange will utilize its existing procedures to monitor issuer compliance with the requirements of proposed Rule 8.601-E. 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 unusual conditions or circumstances are present that could be detrimental to the maintenance of a fair and orderly market. The Exchange will require from the issuer of Active Proxy Portfolio Shares, upon initial listing and periodically thereafter, a representation that it is in compliance with Rule 8.601-E. The Exchange notes that proposed Commentary .01 to Rule 8.601-E would require an issuer of Active Proxy Portfolio Shares to notify the Exchange of any failure to comply with the continued listing requirements of Rule 8.601-E. In addition, the Exchange will require issuers to represent that they will notify the Exchange of any failure to comply with the terms of applicable exemptive and no-action relief. As part of its surveillance procedures, the Exchange will rely on the foregoing procedures to become aware of any non-compliance with the requirements of Rule 8.601-E.

With respect to the Funds, all statements and representations made in this filing regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures

under NYSE Arca Rule 5.5–E(m).

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (“ETP”) Holders in an Information Bulletin (“Bulletin”) of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) the procedures for purchases and redemptions of Shares; (2) NYSE Arca Rule 9.2-E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the Actual Portfolio and Proxy Portfolio will be disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) the requirement that a Fund’s portfolio holdings will be disclosed quarterly, and (6) trading information.

In addition, the Bulletin will reference that a Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. E.T. each trading day.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,²⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices,

²⁸ 15 U.S.C. 78f(b).

²⁹ 15 U.S.C. 78f(b)(5).

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

The Exchange believes that proposed Rule 8.601-E is designed to prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading of Active Proxy Portfolio Shares provide specific initial and continued listing criteria required to be met by such securities.³⁰

Proposed Rule 8.601-E (d) sets forth initial and continued listing criteria applicable to Active Proxy Portfolio Shares. Proposed Rule 8.601-E(d)(1)(A) provides that, for each series of Active Proxy Portfolio Shares, the Exchange will establish a minimum number of Active Proxy Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange. In addition, proposed Rule 8.601-E(d)(1)(B) provides that the Exchange will obtain a representation from the issuer of each series of Active Proxy Portfolio Shares that the NAV per share for the series will be calculated daily and that the NAV, Proxy Portfolio and the Actual Portfolio will be made available to all market participants at the same time. Proposed Rule 8.601-E(d)(2) provides that each series of Active Proxy Portfolio Shares will be listed and traded subject to application of specified continued listing criteria, as set forth above.

Proposed Rule 8.601-E(d)(2)(D)(i) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Active Proxy Portfolio Shares. Trading may be halted because of market conditions or for reasons that,

³⁰ The Exchange represents that, for continued listing, the Funds will be in compliance with Rule 10A-3 under the Act, as provided by NYSE Arca Rule 5.3-E.

in the view of the Exchange, make trading in the series of Active Proxy Portfolio Shares inadvisable. These may include: (a) the extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Portfolio and/or Actual Portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Proposed Rule 8.601-E(d)(2)(D)(iii) provides that, upon notification to the Exchange by the issuer of a series of Active Proxy Portfolio Shares, that the NAV, Proxy Portfolio or Actual Portfolio with respect to a series of Active Proxy Portfolio Shares is not disseminated to all market participants at the same time, the Exchange shall halt trading in such series until such time as the NAV, Proxy Portfolio or Actual Portfolio is available to all market participants at the same time. The Exchange believes that these proposed halt procedures will help ensure that market participants have fair and uniform access to information regarding a fund's NAV, Proxy Portfolio or Actual Portfolio and, therefore, reduce the potential for manipulation and help ensure a fair and orderly market in trading of Active Proxy Portfolio Shares.

Proposed Commentary .01 to NYSE Arca Rule 8.601-E provides that the Exchange will file separate proposals under Section 19(b) of the Act before the listing and trading of Active Proxy Portfolio Shares. All statements or representations contained in such rule filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements.

Proposed Commentary .03 to NYSE Arca Rule 8.601-E provides that the Exchange will implement and maintain written surveillance procedures for Active Proxy

Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will, upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Active Proxy Portfolio Shares.

Proposed Commentary .04 provides that, if the investment adviser to the Investment Company issuing Active Proxy Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a "fire wall" between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company's Actual Portfolio and/or Proxy Portfolio. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's portfolio composition or has access to non-public information regarding the Investment Company's Actual Portfolio or the Proxy Portfolio or changes thereto must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio or to the Proxy Portfolio or changes thereto.

Proposed Commentary .05 provides that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company's Actual Portfolio or the Proxy Portfolio or changes thereto, must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company Actual Portfolio or the Proxy Portfolio or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer,

such person or entity will erect and maintain a “fire wall” between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company Actual Portfolio or Proxy Portfolio.

The Exchange believes proposed Commentary .04 and Commentary .05 will act as a safeguard against any misuse and improper dissemination of non-public information related to a Fund’s Actual Portfolio or Proxy Portfolio or changes thereto. The requirement that any person or entity implement procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio or Proxy Portfolio will act to prevent any individual or entity from sharing such information externally and the internal “fire wall” requirements applicable where an entity is a registered broker-dealer or affiliated with a broker-dealer will act to make sure that no entity will be able to misuse the data for their own purpose. As such, the Exchange believes that this proposal is designed to prevent fraudulent and manipulative acts and practices.

The Exchange’s proposal to amend current Rule 5.3-E to include Active Proxy Portfolio Shares listed pursuant to proposed Rule 8.601-E among the derivative or special purpose securities that are subject to a limited set of corporate governance and disclosure policies would include Active Proxy Portfolio Shares among the derivative or special purpose securities to which the requirements concerning shareholder/annual meetings do not apply. The proposed addition of Active Proxy Portfolio 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 Active Proxy Portfolio 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).

With respect to the proposed listing and trading of Shares of a Fund, the Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.601-E. Each Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order and the holdings will be consistent with all requirements in the Application and Exemptive Order.³¹ Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities and exchange-traded instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Exchange, after consulting with various LMMs that trade ETFs on the Exchange, believes that market makers will be able to make efficient and liquid markets

³¹ See note 15, supra.

priced near the ETF's intraday value, and market makers employ market making techniques such as "statistical arbitrage," including correlation hedging, beta hedging, and dispersion trading, which is currently used throughout the financial services industry, to make efficient markets in exchange-traded products.³² For Active Proxy Portfolio Shares, market makers may use the knowledge of a fund's means of achieving its investment objective, as described in the applicable fund registration statement, as well as a fund's disclosed Proxy Portfolio, to construct a hedging proxy for a fund to manage a market maker's quoting risk in connection with trading fund shares. Market makers can then conduct statistical arbitrage between their hedging proxy and shares of a fund, buying and selling one against the other over the course of the trading day. This ability should permit market makers to make efficient markets in an issue of Active Proxy Portfolio Shares without precise knowledge of a fund's underlying portfolio. This is similar to certain other existing exchange-traded products (for example, ETFs that invest in foreign securities that do not trade during U.S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as market makers gain more confidence in their real-time hedges.

The real-time dissemination of the identity and quantity of Proxy Portfolio component investments, together with the right of Authorized Participants to create and redeem each day at the NAV, will be sufficient for market participants to value and trade shares in a manner that will not lead to significant deviations between the Bid/Ask Price and NAV of shares of a series of Active Proxy Portfolio Shares.

The pricing efficiency with respect to trading a series of Active Proxy Portfolio

³²

See note 10, supra.

Shares will generally rest on the ability of market participants to arbitrage between the shares and a fund's portfolio, in addition to the ability of market participants to assess a fund's underlying value accurately enough throughout the trading day in order to hedge positions in shares effectively. Professional traders can buy shares that they perceive to be trading at a price less than that which will be available at a subsequent time and sell shares they perceive to be trading at a price higher than that which will be available at a subsequent time. It is expected that, as part of their normal day-to-day trading activity, market makers assigned to shares by the Exchange, off-exchange market makers, firms that specialize in electronic trading, hedge funds and other professionals specializing in short-term, non-fundamental trading strategies will assume the risk of being "long" or "short" shares through such trading and will hedge such risk wholly or partly by simultaneously taking positions in correlated assets³³ or by netting the exposure against other, offsetting trading positions – much as such firms do with existing ETFs and other equities. Disclosure of a fund's investment objective and principal investment strategies in its prospectus and SAI should permit professional investors to engage easily in this type of hedging activity.

The Exchange believes that the Funds and Active Proxy Portfolio Shares generally, will provide investors with a greater choice of active portfolio managers and

³³ Price correlation trading is used throughout the financial industry. It is used to discover both trading opportunities to be exploited, such as currency pairs and statistical arbitrage, as well as for risk mitigation such as dispersion trading and beta hedging. These correlations are a function of differentials, over time, between one or multiple securities pricing. Once the nature of these price deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging basket has been identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period, making corrections where warranted.

active strategies through which they can manage their assets in an ETF structure. This greater choice of active asset management is expected to be similar to the diversity of active managers and strategies available to mutual fund investors. Unlike mutual fund investors, investors in Active Proxy Portfolio Shares would also accrue the benefits derived from the ETF structure, such as lower fund costs, tax efficiencies, intraday liquidity, and pricing that reflects current market conditions rather than end-of-day pricing.

The Adviser represents that, unlike ETFs that publish their portfolios on a daily basis, the Fund, as Active Proxy Portfolio Shares, proposes to allow for efficient trading of Shares through an effective Fund portfolio transparency substitute - Proxy Portfolio transparency. The Adviser believes that this approach will provide an important benefit to investors by protecting the Fund from the potential for front-running of portfolio transactions and the potential for free-riding on a Fund's portfolio strategies, each of which could adversely impact the performance of a Fund.

The Funds will utilize the NYSE Proxy Portfolio Methodology, allowing market participants to assess the intraday value and associated risk of a Fund's Actual Portfolio and thereby facilitate the purchase and sale of Shares by investors in the secondary market at prices that do not vary materially from their NAV.

The Exchange believes that Active Proxy Portfolio Shares will provide the platform for many more asset managers to launch ETFs, increasing the investment choices for consumers of actively managed funds, which should lead to a greater competitive landscape that can help to reduce the overall costs of active investment management for retail investors. Unlike mutual funds, Active Proxy Portfolio Shares would be able to use

the efficient share settlement system in place for ETFs today, translating into a lower cost of maintaining shareholder accounts and processing transactions.

Each Fund's investments will be consistent with its investment objective. Each Fund's investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, a Fund's investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2X or -3X) of a Fund's primary broad-based securities benchmark index (as defined in Form N-1A).

The Adviser represents that investors will also benefit because a Fund's operating costs, such as transfer agency costs, are generally lower in ETFs than in mutual funds. The Funds will have access to the identical clearing and settlement procedures now used by U.S. domiciled ETFs, and therefore, should experience many of the operational and cost efficiencies benefitting current ETF investors.

The Adviser represents further that in-kind Share creation/redemption orders will allow a Fund to enjoy overall transaction costs lower than those experienced by mutual funds. A Fund's in-kind Share creation and redemption process will facilitate and enhance active management strategies by generally limiting the portfolio manager's need to transact in a large volume of trades in order to maintain desired investment exposures. In addition, the Adviser represents that the Fund will receive tax efficiency benefits of the ETF structure because of in-kind Share creation and redemption activity.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of a series of Active Proxy Portfolio Shares that the NAV

per share of a fund will be calculated daily and that the NAV will be made available to all market participants at the same time. With respect to the Funds, investors can also obtain a Fund's SAI, shareholder reports, and its Form N-CSR, Form N-PORT and Form N-CEN. A Fund's SAI and shareholder reports will be available free upon request from a Fund, and those documents and the Form N-CSR, Form N-PORT and Form N-CEN may be viewed on-screen or downloaded from the Commission's website. In addition, with respect to the Funds, a large amount of information will be publicly available regarding a Fund and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares will be available via the CTA high-speed line. The website for the Funds will include a form of the prospectus for a Fund that may be downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis. The Proxy Portfolio holdings (including the identity and quantity of investments in the Proxy Portfolio) will be publicly available on the Funds' website before the commencement of trading in Shares on each Business Day.

Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12-E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Rule 8.601-E (d)(2)(D), which sets forth circumstances under which Shares of a Fund will be halted. In addition, as noted above, investors will have ready access to quotation and last sale information for the Shares. The Shares will conform to the initial and continued listing criteria under

proposed Rule 8.601-E.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding quotation and last sale information for the Shares.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change would permit listing and trading of another type of actively-managed ETF that has characteristics different from existing actively-managed and index ETFs and would introduce additional competition among various ETF products to the benefit of investors.

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-2019-95 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-2019-95. 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-2019-95 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.³⁴

Eduardo A. Aleman
Deputy Secretary

³⁴ 17 CFR 200.30-3(a)(12).

Underlining indicates new text;
[brackets] indicate deletions.

Text of the Proposed Rule Change

Rules of the NYSE Arca, Inc.

* * * * *

Rule 8-E

Trading of Certain Equity Derivatives

* * * * *

Rule 8.601-E. Active Proxy Portfolio Shares

(a) The Exchange shall consider for trading, whether by listing or pursuant to unlisted trading privileges, Active Proxy Portfolio Shares that meet the criteria of this Rule.

(b) Applicability. This Rule is applicable only to Active Proxy Portfolio Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on the Exchange of such securities. Active Proxy Portfolio Shares are included within the definition of “security” or “securities” as such terms are used in the Rules of the Exchange.

(c) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:

(1) Active Proxy Portfolio Shares. The term “Active Proxy Portfolio Share” means a security that (a) is issued by a investment company registered under the Investment Company Act of 1940 (“Investment Company”) organized as an open-end management investment company that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; (b) is issued in a specified minimum number of shares , or multiples thereof, in return for a deposit by the purchaser of the Proxy Portfolio and/or cash with a value equal to the next determined net asset value (“NAV”); (c) when aggregated in the same specified minimum number of Active Proxy Portfolio Shares, or multiples thereof, may be redeemed at a holder’s request in return for the Proxy Portfolio and/or cash to the holder by the issuer with a value equal to the next determined NAV; and (d) the

portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

(2) Actual Portfolio. The term “Actual Portfolio” means the identities and quantities of the securities and other assets held by the Investment Company that shall form the basis for the Investment Company’s calculation of NAV at the end of the business day.

(3) Proxy Portfolio. The term “Proxy Portfolio” means a specified portfolio of securities, other financial instruments and/or cash designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series. The website for each series of Active Proxy Portfolio Shares shall disclose the information regarding the Proxy Portfolio as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series, including the following, to the extent applicable:

(i) Ticker symbol;

(ii) CUSIP or other identifier;

(iii) Description of holding;

(iv) Quantity of each security or other asset held; and

(v) Percentage weighting of the holding in the portfolio.

(4) Reporting Authority. The term “Reporting Authority” in respect of a particular series of Active Proxy Portfolio Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Active Proxy Portfolio 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, NAV, the Actual Portfolio, Proxy Portfolio, or other information relating to the issuance, redemption or trading of Active Proxy Portfolio Shares. A series of Active Proxy Portfolio Shares may have more than one Reporting Authority, each having different functions.

(5) Normal Market Conditions. The term "normal market conditions" includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

(d) Initial and Continued Listing. Active Proxy Portfolio Shares shall be listed and traded on the Exchange subject to application of the following criteria:

(1) Initial Listing. Each series of Active Proxy Portfolio Shares shall be listed and traded on the Exchange subject to application of the following initial listing criteria:

(A) For each series, the Exchange shall establish a minimum number of Active Proxy Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange.

(B) The Exchange shall obtain a representation from the issuer of each series of Active Proxy Portfolio Shares that the NAV per share for the series shall be calculated daily and that the NAV, the Proxy Portfolio, and the Actual Portfolio shall be made publicly available to all market participants at the same time.

(C) All Active Proxy Portfolio Shares shall have a stated investment objective, which shall be adhered to under normal market conditions.

(2) Continued Listing. Each series of Active Proxy Portfolio Shares shall be listed and traded on the Exchange subject to application of the following continued listing criteria:

(A) Actual Portfolio.

(i) The Actual Portfolio shall be publicly disseminated within at least 60 days following the end of every fiscal quarter and shall be made publicly available to all market participants at the same time.

(B) Proxy Portfolio.

(i) The Proxy Portfolio shall be made publicly available on the website for each series of Active Proxy Portfolio Shares at least once daily and shall be made available to all market participants at the same time.

(C) 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) for, a series of Active Proxy Portfolio Shares under any of the following circumstances:

(i) if any of the continued listing requirements set forth in Rule 8.601-E are not continuously maintained;

(ii) if either the Proxy Portfolio or Actual Portfolio is not made available to all market participants at the same time;

(iii) if, following the initial twelve month period after commencement of trading on the Exchange of a series of Active Proxy Portfolio Shares, there are fewer than 50 beneficial holders of such series of Active Proxy Portfolio Shares;

(iv) if the Exchange is notified, or otherwise becomes aware, that the Investment Company has failed to file any filings required by the Commission or is not in compliance with the conditions of any currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to a series of Active Proxy Portfolio Shares;

(v) if any of the statements or representations regarding (a) the description of the portfolio, (b) limitations on portfolio holdings, or (c) the applicability of Exchange listing rules, specified in the Exchange's rule filing pursuant to Section 19(b) of the Securities Exchange Act of 1934 to permit the listing and trading of a series of Active Proxy Portfolio Shares, is not continuously maintained; or

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

(D) Trading Halt.

(i) The Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Active Proxy Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Active Proxy Portfolio Shares inadvisable. These may include: (a) the extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Portfolio and/or Actual Portfolio, or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

(ii) If a series of Active Proxy Portfolio Shares is trading on the Exchange pursuant to unlisted trading privileges, the Exchange shall halt trading in that series as specified in Rule 7.18-E(d)(1).

(iii) If the Exchange becomes aware that the NAV, Proxy Portfolio or Actual Portfolio with respect to a series of Active Proxy Portfolio Shares is not disseminated to all market participants at the same time, the Exchange shall halt trading in such series until such time as the NAV, Proxy Portfolio or Actual Portfolio is available to all market participants at the same time.

(E) Termination. Upon termination of an Investment Company, the Exchange requires that Active Proxy Portfolio Shares issued in connection with such entity be removed from Exchange listing.

(F) Voting. Voting rights shall be as set forth in the applicable Investment Company prospectus.

(e) Limitation of Exchange Liability. Neither the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a 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 portfolio value; the current value of the portfolio of securities required to be deposited to the Investment Company in connection with issuance of Active Proxy Portfolio Shares; the amount of any dividend equivalent payment or cash distribution to holders of Active Proxy Portfolio Shares; NAV; or other information relating to the purchase, redemption, or trading of Active Proxy Portfolio Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a 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, when the Exchange is acting in the capacity of a 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.

Commentary:

.01 The Exchange will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before the listing and trading of a series of Active Proxy Portfolio Shares. All statements or representations contained in such rule filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements.

.02 Transactions in Active Proxy Portfolio Shares shall occur during the trading hours specified in NYSE Arca Rule 7.34-E(a).

.03 Surveillance Procedures. The Exchange will implement and maintain written surveillance procedures for Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will, upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Active Proxy Portfolio Shares.

.04 If the investment adviser to the Investment Company issuing Active Proxy Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a "fire wall" between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company's Actual Portfolio and/or Proxy Portfolio. Any person related to the investment adviser or

Investment Company who makes decisions pertaining to the Investment Company's portfolio composition or has access to non-public information regarding the Investment Company's Actual Portfolio or the Proxy Portfolio or changes thereto must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio or the Proxy Portfolio or changes thereto.

.05 Any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company's Actual Portfolio or the Proxy Portfolio or changes thereto, must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company Actual Portfolio or the Proxy Portfolio or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a "fire wall" between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company Actual Portfolio or Proxy Portfolio.

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.

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), 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), 8.601-E (Active Proxy Portfolio Shares), 8.700-E (Managed Trust Securities) and 8.900-E (Managed Portfolio Shares).

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), 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), 8.601-E (Active Proxy Portfolio Shares), 8.700-E (Managed Trust Securities) and 8.900-E (Managed Portfolio Shares).
