

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103885; File No. SR-NYSEARCA-2025-39]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, to Adopt New Rule 5.2-E(j)(9) to Permit the Generic Listing and Trading of Class Exchange-Traded Fund Shares

September 5, 2025.

On May 28, 2025, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt new NYSE Arca Rule 5.2-E(j)(9) to permit the generic listing and trading of Class Exchange-Traded Fund Shares. The proposed rule change was published for comment in the Federal Register on June 10, 2025.³

On July 15, 2025, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 103189 (June 4, 2025), 90 FR 24463 (“Notice”). The Commission has received no comments regarding the proposed rule change.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 103457, 90 FR 34044 (July 18, 2025). The Commission designated September 8, 2025 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

On September 4, 2025, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety.⁶

The Commission is publishing this notice and order to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act⁷ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

I. The Exchange's Description of the Proposal, as Modified by Amendment No. 1

The Exchange proposes to (1) adopt a new Rule 5.2-E(j)(9) to permit the generic listing and trading of Class Exchange-Traded Fund ("ETF") Shares, and (2) make certain conforming changes to the Exchange's rules to accommodate the proposed listing of Class ETF Shares. This Amendment No. 1 to SR-NYSEARCA-2025-39 replaces SR-NYSEARCA-2025-39 as originally filed and supersedes such filing in its entirety. The proposed rule change is available on the Exchange's website at www.nyse.com and at the principal office of the Exchange.

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.

⁶ Amendment No. 1 is available at: <https://www.sec.gov/comments/sr-nysearca-2025-39/srnysearca202539.htm>.

⁷ 15 U.S.C. 78s(b)(2)(B).

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

1. Purpose

The Exchange proposes to (1) adopt a new Rule 5.2-E(j)(9) to permit the generic listing and trading, or trading pursuant to unlisted trading privileges, of Class ETF Shares; and (2) make certain conforming changes to the Exchange’s rules to accommodate the proposed listing of Class ETF Shares.⁸

Consistent with other products (specifically, Investment Company Units listed pursuant to Rule 5.2- E(j)(3), Managed Fund Shares listed pursuant to Rule 8.600-E, and ETF Shares listed pursuant to Rule 5.2-E(j)(8)), Class ETF Shares would be permitted to be listed and traded on the Exchange without prior Commission approval order or notice of effectiveness pursuant to Section 19(b) of the Act.⁹

Background

There are numerous applications for exemptive relief for Class ETF Shares currently before the Commission¹⁰ requesting exemptive relief similar to that previously granted to other

⁸ The Exchange notes that Cboe BZX Exchange, Inc. (“BZX”) and The Nasdaq Stock Market LLC (“Nasdaq”) have filed substantially similar rule filings. See Securities Exchange Act Release Nos. 103188 (June 4, 2025), 90 FR 24457 (June 10, 2025) (SR-CboeBZX-2025-076) & 103072 (May 20, 2025), 90 FR 22373 (May 27, 2025) (SR-NASDAQ-2025-037).

⁹ Rule 19b-4(e)(1) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (“SRO”) is not deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO’s trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the SRO has a surveillance program for the product class. As contemplated by proposed Rule 5.2-E(j)(9), the Exchange proposes to establish generic listing standards for Class ETF Shares of the ETF Class (as defined herein) that would be required to operate as an ETF pursuant to the Multi-Class Fund Exemptive Relief (as defined herein) and be in compliance with the conditions and requirements of Rule 6c-11 under the Investment Company Act of 1940 (the “Investment Company Act”), except as noted in the Multi-Class Fund Exemptive Relief. Class ETF Shares listed under proposed Rule 5.2-E(j)(9) would therefore not need a separate proposed rule change pursuant to Rule 19b-4 before it can be listed and traded on the Exchange.

¹⁰ See DFA Investment Dimensions Group Inc. and Dimensional Investment Group Inc., (amendment filed March 31, 2025); F/m Investments LLC (amendment filed April 10, 2025); Fidelity Hastings Street Trust

funds.¹¹ The current proposal would provide for the “generic” listing and/or trading of Class ETF Shares under proposed Rule 5.2-E(j)(9) on the Exchange.

The Commission began granting limited relief for The Vanguard Group, Inc. (“Vanguard”) in 2000 to offer certain index-based open-end management investment companies with Class ETF Shares.¹² After this relief was granted, there was limited public discourse about Class ETF Shares until 2019, when the prospect of providing blanket exemptive relief to Class ETF Shares was addressed in the Commission’s adoption of Rule 6c-11 under the Investment Company Act (the “ETF Rule”).¹³ The ETF Rule permits ETFs that satisfy certain conditions to operate without the expense or delay of obtaining an exemptive order. However, the ETF Rule did not provide blanket exemptive relief to allow for Class ETF Shares as part of the final rule. Instead, the Commission concluded that Class ETF Shares should request relief through the exemptive application process so that the Commission may assess all relevant policy considerations in the context of the facts and circumstances of particular applicants. The

and Fidelity Management & Research Company (amendment filed April 11, 2025); Morgan Stanley Institutional Fund Trust and Morgan Stanley Investment Management Inc. (amendment filed April 11, 2025); BlackRock Funds (amendment filed April 15, 2025); Guinness Atkinson Funds (amendment filed April 17, 2025); Metropolitan West Funds, TCW ETF Trust, and TCW Funds, Inc. (amendment filed April 22, 2025); and Northern Funds and Northern Trust Investments, Inc. (amendment filed May 2, 2025).

¹¹ See note 12, *infra*.

¹² See Vanguard Index Funds, Investment Company Act Release Nos. 24680 (Oct. 6, 2000) (notice) and 24789 (Dec. 12, 2000) (order). The Commission itself, as opposed to the Commission staff acting under delegated authority, considered the original Vanguard application and determined that the relief was appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Investment Company Act. In the process of granting the order, the Commission also considered and denied a hearing request on the original application, as reflected in the final Commission order. See also the Vanguard Group, Inc., Investment Company Act Release Nos. 26282 (Dec. 2, 2003) (notice) and 26317 (Dec. 30, 2003) (order); Vanguard International Equity Index Funds, Investment Company Act Release Nos. 26246 (Nov. 3, 2003) (notice) and 26281 (Dec. 1, 2003) (order); Vanguard Bond Index Funds, Investment Company Act Release Nos. 27750 (Mar. 9, 2007) (notice) and 27773 (April 2, 2007) (order) (collectively referred to as the “Vanguard Orders”).

¹³ See Securities Exchange Act Release No. 10695 (September 26, 2019), 84 FR 57162 (October 24, 2019) (the “ETF Rule Adopting Release”).

Exchange adopted Rule 5.2-E(j)(8)¹⁴ shortly after implementation of the ETF Rule and, because the ETF Rule did not provide blanket relief to the Class ETF Shares listed on the Exchange pursuant to previously granted exemptive relief and there were no exemptive applications before the Commission at that time, the Exchange did not propose to include any language comparable to what is being proposed herein.

As noted, a number of applications for exemptive relief to permit the applicable fund to offer Class ETF Shares (the “Applications”) have been submitted to the Commission starting in early 2023. In general, the Applications state that the ability of a fund to offer Class ETF Shares, i.e., a fund offering both a class of mutual fund shares and a class of shares that are exchange-traded, could be beneficial to the fund and to shareholders of each type of class for various reasons, including more efficient portfolio management, better secondary market trading opportunities, and cost efficiencies, among others.¹⁵ The Commission has granted, by order, specific exemptive relief (“Multi-Class Fund Exemptive Relief”) under the Investment Company Act on [DATE], that permits, subject to certain conditions and requirements, a Multi-Class Fund (as defined below) to issue Class ETF Shares (as defined below) and one or more classes of shares that are not exchange traded, among other things.¹⁶

Proposed Rule Change

Proposed Rule 5.2-E(j)(9)

Proposed Rule 5.2-E(j)(9) is modeled on current Rule 5.2-E(j)(8).

¹⁴ See Securities Exchange Act No. 88625 (April 13, 2020) 85 FR 21479 (April 17, 2020) (SR-NYSEArca-2019-81) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to Adopt NYSE Arca Rule 5.2-E(j)(8) Governing the Listing and Trading of ETF Shares).

¹⁵ See note 10, *supra*.

¹⁶ The Exchange will amend this filing to add a citation to the Multi-Class Fund Exemptive Relief once that becomes available.

Rule 5.2-E(j)(9)(a) would provide that the Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Class ETF Shares that meet the criteria of the proposed rule.¹⁷

Proposed Rule 5.2-E(j)(9)(b) titled “Applicability” would provide that the proposed rule would be applicable only to Class ETF Shares. Except to the extent inconsistent with proposed Rule 5.2-E(j)(9), 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. Class ETF Shares are included within the definition of “security” or “securities” as such terms are used in the Rules of the Exchange.

Proposed Rule 5.2-E(j)(9)(c) titled “Definitions” would set forth the meanings of terms as used in the Rule unless the context otherwise requires.

Proposed Rule 5.2-E(j)(9)(c)(1) would provide that the term “Class ETF Shares” means shares of the ETF Class issued by a Multi-Class Fund.

Proposed Rule 5.2-E(j)(9)(c)(2) would provide that the term “ETF Class” means the class of exchange-traded shares of a Multi-Class Fund that (i) operates as an exchange-traded fund pursuant to exemptive relief granted by order under the Investment Company Act (“Multi-Class Fund Exemptive Relief”), and (ii) is in compliance with the requirements of Rules 5.2-

¹⁷ To the extent that Class ETF Shares do not satisfy one or more of the criteria in proposed Rule 5.2-E(j)(9), the Exchange may file a separate proposal under Section 19(b) of the Act in order to list such securities on the Exchange. Any of the statements or representations in that proposal regarding the index composition, the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, and intraday indicative values (as applicable), or the applicability of Exchange listing rules specified in any filing to list such Class ETF Shares shall constitute continued listing requirements for the Class ETF Shares. Further, in the event that Class ETF Shares become listed under proposed Rule 5.2-E(j)(9) and subsequently can no longer satisfy the requirements of proposed Rule 5.2-E(j)(9), such Class ETF Shares may be listed as Investment Company Units pursuant to Rule 5.2-E(j)(3) or Managed Fund Shares under Rule 8.600-E, as applicable, as long as the Class ETF Shares meet all listing requirements applicable under the alternate listing rule. If the Class ETF Shares do change listing standards, the Exchange would have to comply with all requirements of Rule 19b-4(e) with respect to such Class ETF Shares.

E(j)(9)(e)(1)(ii) and 5.2-E(j)(9)(e)(2)(A)(ii) discussed below on an initial and continued listing basis.

Proposed Rule 5.2-E(j)(9)(c)(3) would provide that the term “Multi-Class Fund” means a registered open-end management company that (i) pursuant to Multi-Class Fund Exemptive Relief, issues Class ETF Shares and one or more classes of shares that are not exchange traded, and (ii) is in compliance with the conditions and requirements of the Multi-Class Fund Exemptive Relief.

Proposed Rule 5.2-E(j)(9)(c)(4) would provide that the term “Reporting Authority” in respect of a particular Multi-Class Fund means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists Class ETF Shares (if the Exchange is trading such securities pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such Multi-Class Fund, including, but not limited to, the amount of any dividend equivalent payment or cash distribution to holders of Class ETF Shares, net asset value, index or portfolio value, the current value of the portfolio of securities required to be deposited in connection with the issuance of Class ETF Shares, or other information relating to the issuance, redemption or trading of Class ETF Shares. A Multi-Class Fund may have more than one Reporting Authority, each having different functions.

Proposed Rule 5.2-E(j)(9)(d) titled “Limitation of Exchange Liability” would provide that neither the Exchange, the Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current index or portfolio value; the current value of the portfolio of securities required to be deposited to the Multi-Class Fund in connection with the issuance of Class ETF Shares; the amount of any dividend equivalent payment or cash

distribution to holders of Class ETF Shares; net asset value; or other information relating to the purchase, redemption, or trading of Class ETF Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

Proposed Rule 5.2-E(j)(9)(e) would provide that the Exchange may approve Class ETF Shares of a Multi-Class Fund for listing and/or trading (including pursuant to unlisted trading privileges) pursuant to Rule 19b-4(e) of the Act. For each listed Class ETF Shares, the ETF Class and the Multi-Class Fund issuing the Class ETF Shares, as applicable, must satisfy the requirements of Rule 5.2-E(j)(9) upon initial listing and, except for subparagraph (1)(A) of Rule 5.2-E(j)(9)(e), on a continuing basis. An issuer of such securities must notify the Exchange of any failure to comply with such requirements.

Proposed Rule 5.2-E(j)(9)(e)(1) titled “Initial and Continued Listing” would provide that Class ETF Shares will be listed and traded on the Exchange provided that: (i) the Multi-Class Fund is eligible to operate an ETF Class as an exchange-traded fund pursuant to, and is otherwise in compliance with the terms and conditions of, the Multi-Class Fund Exemptive Relief; (ii) the ETF Class is in compliance with the conditions and requirements of Rule 6c-1.1 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief; and (iii) the ETF Class and the Multi-Class Fund each satisfies the requirements of this Rule, as applicable, on an initial and continued listing basis. Proposed Rule 5.2-E(j)(9)(e)(1)(A), titled

“Initial Shares Outstanding.” would provide that the Exchange will establish a minimum number of Class ETF Shares required to be outstanding at the time of commencement of trading on the Exchange.

Proposed Rule 5.2-E(j)(9)(e)(2) titled “Suspension of trading or removal” would provide that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 5.5-E(m) of Class ETF Shares under any of the following circumstances:

- if the Exchange becomes aware that with respect to the Class ETF Shares: (i) the Multi-Class Fund is no longer eligible to operate an ETF Class as an exchange-traded fund pursuant to, or is otherwise no longer in compliance with the terms and conditions of, the Multi-Class Fund Exemptive Relief; or (ii) the ETF Class is no longer in compliance with the conditions and requirements of Rule 6c-11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief;
- if any of the other listing requirements set forth in proposed Rule 5.2-E(j)(9) are not continuously maintained (proposed Rule 5.2-E(j)(9)(e)(2)(B));
- if, following the initial twelve-month period after commencement of trading on the Exchange of Class ETF Shares, there are fewer than 50 beneficial holders of Class ETF Shares (proposed Rule 5.2-E(j)(9)(e)(2)(C)); or
- 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 5.2-E(j)(9)(e)(2)(D)).

Proposed Rule 5.2-E(j)(9)(f) would provide that transactions in Class ETF Shares will occur during the trading hours specified in Rule 7.34-E(a).

Proposed Rule 5.2-E(j)(9)(g) titled “Surveillance Procedures” would provide that the Exchange will implement and maintain written surveillance procedures for Class ETF Shares.

Proposed Rule 5.2-E(j)(9)(h) titled “Termination” would provide that with respect to the Class ETF Shares, upon termination of the Multi-Class Fund or the ETF Class, as the case may be, the Exchange requires that the Class ETF Shares be removed from Exchange listing.

The Exchange proposes to add Commentary .01 to proposed Rule 5.2-E(j)(9). Proposed Commentary .01 to Rule 5.2-E(j)(9) would provide that the following requirements shall be met by Class ETF Shares on an initial and continued listing basis.

Subsection (a)(1) of proposed Commentary .01 would provide that with respect to Class ETF Shares based on an index, if the underlying index is maintained by a broker-dealer or fund adviser, the broker-dealer or fund adviser will erect and maintain a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index will be calculated by a third party who is not a broker-dealer or fund adviser.

Subsection (a)(2) of proposed Commentary .01 would provide that any advisory committee, supervisory board, or similar entity that advises a Reporting Authority (as defined in the proposed rule) or that makes decisions on the index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.

Subsection (b) of proposed Commentary .01 would provide that with respect to a Multi-Class Fund that is actively managed, if the investment adviser to the Multi-Class Fund issuing Class ETF Shares is affiliated with a broker-dealer, such investment adviser will erect and maintain a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Multi-Class Fund's

portfolio. Further, personnel who make decisions on the portfolio composition must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the applicable portfolio. The Reporting Authority that provides information relating to the Multi-Class Fund’s portfolio must also implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of such portfolio.

Proposed Conforming Changes

The Exchange also proposes corresponding amendments to include Class ETF Shares in other Exchange rules, which are intended to align the treatment of the proposed products with how other open-end management investment company shares (e.g., Investment Company Units, Managed Fund Shares, and ETF Shares) are treated under the Exchange’s rules.

First, the Exchange proposes to add Class ETF Shares to the definition of “Derivative Securities Product and UTP Derivative Securities Product” in Rule 1.1.

Second, the Exchange proposes to amend Rule 5.3-E to exempt Class ETF Shares from the requirements of Rule 5.3-E(d)(9) in connection with the acquisition of the stock or assets of an affiliated registered investment company in a transaction that complies with Rule 17a-8 under the Investment Company Act and does not otherwise require shareholder approval under the Investment Company Act¹⁸ and the rules thereunder or any other Exchange rule.¹⁹ In addition, the Exchange proposes to add proposed Rule 5.2-E(j)(9) to the last paragraph of Rule 5.3-E, which defines derivative and special purpose securities for purposes of Rule 5.3-E.

¹⁸ The Exchange also proposes non-substantive, technical changes to delete two extraneous words in this rule.

¹⁹ The Exchange notes that these proposed changes would subject Class ETF Shares to the same corporate governance requirements as other open-end management investment companies listed on the Exchange.

Discussion

Proposed Rule 5.2-E(j)(9) is based in large part on Rule 5.2-E(j)(8) related to the listing and trading of ETF Shares, which are issued under the Investment Company Act and qualify as ETF Shares under Rule 6c-11 under the Investment Company Act. ETF Shares are similar to Class ETF Shares because the ETF Class is required to operate as an ETF pursuant to the Multi-Class Fund Exemptive Relief and be in compliance with the conditions and requirements of Rule 6c-11 under the Investment Company Act (except as noted in the Multi-Class Fund Exemptive Relief).²⁰ The proposed Class ETF Shares generic listing rule would apply only to the class of shares that are exchange-traded. Because the ETF Class would be required to comply, among other things, with the conditions and requirements of Rule 6c-11 under the Investment Company Act, similar to ETF Shares under Rule 5.2-E(j)(8), the Exchange believes that using Rule 5.2-E(j)(8) as the basis for proposed Rule 5.2-E(j)(9) is appropriate.

The Exchange believes that the proposal is designed to prevent fraudulent and manipulative acts and practices because the Exchange will perform ongoing surveillance of Class ETF Shares listed on the Exchange in order to ensure (i) the Multi-Class Fund is, and continues to be, eligible to operate an ETF Class as an exchange-traded fund pursuant to, and is otherwise in compliance with, the terms and conditions of, the Multi-Class Fund Exemptive Relief, (ii) the ETF Class continues to be compliant with the conditions and requirements of Rule 6c-11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief, and (iii) the ETF Class and the Multi-Class Fund each satisfies the requirements of the proposed Rule, as applicable, on an initial and continuing basis. The Exchange believes that the manipulation concerns that such standards are intended to address are otherwise mitigated by a

²⁰ See note 16, supra.

combination of the Exchange’s surveillance procedures, the Exchange’s ability to halt trading and to suspend trading and commence delisting proceedings under proposed Rule 5.2-E(j)(9)(e)(2). The Exchange will also halt trading in Class ETF Shares under the conditions specified in Rule 7.12-E, “Trading Halts Due to Extraordinary Market Volatility.” The Exchange also believes that such concerns are further mitigated by enhancements to the arbitrage mechanism that have come from Rule 6c-11 under the Investment Company Act, specifically the additional flexibility provided through the use of custom baskets for creations and redemptions and the additional information made available to the public through the additional daily website disclosure obligations applicable under Rule 6c-11.²¹ The Exchange also notes that there are firewall and other information barrier restrictions in place in the proposed rule text.²² The Exchange believes that the combination of these factors will act to keep Class ETF Shares trading near the value of their underlying holdings and further mitigate concerns around manipulation of Class ETF Shares on the Exchange.

The Exchange will monitor for compliance to ensure that (i) the Multi-Class Fund is, and continues to be, eligible to operate an ETF Class as an exchange-traded fund pursuant to, and is in otherwise in compliance with, the terms and conditions of, the Multi-Class Fund Exemptive Relief, (ii) the ETF Class continues to be compliant with the conditions and requirements of Rule 6c-11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief, and (iii) the ETF Class and the Multi-Class Fund each satisfies the requirements of Rule 5.2-E(j)(9), as applicable, on an initial and continuing basis. Specifically, the Exchange will review the website of Class ETF Shares listed on the Exchange in order to ensure that the

²¹ The Exchange notes that the Commission came to a similar conclusion in several places in the ETF Rule Adopting Release. See ETF Rule Adopting Release at 15-18; 60-61; 69-70; 78-79; 82-84; and 95-96.

²² See proposed Rule 5.2-E(j)(9), Commentary .01(a)(1) & (2).

requirements of Rule 6c-11 are being met. The Exchange will also employ numerous intraday alerts that will notify Exchange personnel of trading activity throughout the day that is potentially indicative of certain disclosures not being made timely or the presence of other unusual conditions or circumstances that could be detrimental to the maintenance of a fair and orderly market. As a backstop to the surveillances described above, the Exchange also notes that Rule 5.2-E(j)(9) would require an issuer of Class ETF Shares to notify the Exchange of any failure to comply with the requirements of the proposed Rule, the Multi-Class Fund Exemptive Relief, or Rule 6c-11 under the Investment Company Act.

The Exchange may suspend trading in and commence delisting proceedings for Class ETF Shares where such securities are not in compliance with the applicable listing standards or where the Exchange believes that further dealings on the Exchange are inadvisable.²³ The Exchange also notes that proposed Rule 5.2-E(j)(9)(e) requires any issuer to provide the Exchange with prompt notification after it becomes aware that: (i) the Multi-Class Fund is no longer eligible to operate an ETF Class as an exchange-traded fund pursuant to, or otherwise no longer complies with, the terms and conditions of, the Multi-Class Fund Exemptive Relief; (ii) the ETF Class is no longer compliant with the conditions and requirements of Rule 6c-11 under

²³ Specifically, proposed Rule 5.2-E(j)(9)(e)(1) provides that Class ETF Shares will be listed and traded on the Exchange subject to application of proposed Rule 5.2-E(j)(9)(e)(2). Proposed Rule 5.2-E(j)(9)(e)(2) provides that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 5.5(m) for, Class ETF Shares under any of the following circumstances: (i) if the Exchange becomes aware, with respect to the Class ETF Shares: (1) the Multi-Class Fund is no longer eligible to operate an ETF Class as an exchange-traded fund pursuant to, or is otherwise no longer in compliance with the terms and conditions of, the Multi-Class Fund Exemptive Relief; or (2) the ETF Class is no longer in compliance with the conditions and requirements of Rule 6c-11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief; (ii) if any of the other listing requirements set forth in this Rule are not continuously maintained; (iii) if, following the initial twelve-month period after commencement of trading on the Exchange of Class ETF Shares, there are fewer than 50 beneficial holders of such the Class ETF Shares; or (iv) 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 5.2-E(j)(9)(h) provides that with respect to the Class ETF Shares, upon termination of the Multi-Class Fund or the ETF Class, as the case may be, the Exchange requires that Class ETF Shares be removed from Exchange listing.

the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief; or

(iii) the ETF Class or the Multi-Class Fund no longer satisfies the requirements of proposed Rule 5.2-E(j)(9), as applicable, on an initial and continuing basis.²⁴

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

²⁴ The Exchange notes that failure by an issuer to notify the Exchange of non-compliance pursuant to proposed Rule 5.2-E(j)(9)(e) would itself be considered non-compliance with the requirements of Rule 5.2-E(j)(9) and would subject the Class ETF Shares to potential trading halts and the delisting process under Rule 5.5(m).

system relating to municipal bond trading activity for surveillance purposes in connection with trading in Class ETF Shares, to the extent that the Multi-Class Fund for the Class ETF Shares holds municipal securities. Finally, the issuer of Class ETF Shares will be required to comply with Rule 10A-3 under the Act for the initial and continued listing of Class ETF Shares, as provided under Rule 5.3-E.²⁵

The Exchange notes that it may consider all relevant factors in exercising its discretion to halt or suspend trading in Class ETF Shares. Trading may be halted if the circuit breaker parameters in Rule 7.12-E have been reached, because of other market conditions, or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which certain information about the Class ETF Shares that is required to be disclosed under Rule 6c-11 under the Investment Company Act is not being made available, including specifically where the Exchange becomes aware that the net asset value or the daily portfolio disclosure with respect to Class ETF Shares is not disseminated to all market participants at the same time, it will halt trading in such securities until such time as the net asset value or the daily portfolio disclosure is available to all market participants;²⁶ (2) if an interruption to the dissemination to the value of the index or reference asset on which Class ETF Shares is based persists past the trading day in which it occurred or is no longer calculated or available; (3) trading in the securities comprising the underlying index or portfolio has been halted in the primary market(s); or (4) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

²⁵ The Exchange notes that these proposed changes would subject Class ETF Shares to the same corporate governance requirements as other open-end management investment companies listed on the Exchange.

²⁶ The Exchange will obtain a representation from the issuer of Class ETF Shares that the net asset value per share will be calculated daily and made available to all market participants at the same time, and the requirements pertaining to the Multi-Class Fund Exemptive Relief and Rule 6c-11 under the Investment Company Act in proposed Rule 5.2-E(j)(9) will be satisfied.

The Exchange deems Class ETF Shares to be equity securities and therefore they would be subject to the full panoply of Exchange rules and procedures that currently govern the trading of equity securities on the Exchange.²⁷

2. Statutory Basis

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),²⁹ in that it is designed 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 5.2-E(j)(9) is designed to prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading Class ETF Shares on the Exchange provide specific initial and continued listing criteria required to be met by such securities. Proposed Rule 5.2-E(j)(9)(e) sets forth initial and continued listing criteria applicable to Class ETF Shares, specifically providing that the Exchange may approve Class ETF Shares for listing and/or trading (including pursuant to unlisted trading privileges) on the Exchange pursuant to Rule 19b-4(e) under the Act, provided that (i) the Multi-Class Fund is eligible to operate an ETF Class as an exchange-traded fund pursuant to, and is otherwise in compliance with the terms and conditions of, the Multi-Class Fund Exemptive Relief; (ii) the ETF Class is in compliance with the conditions and requirements of Rule 6c-11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief; and (iii)

²⁷ With respect to trading in Class ETF Shares, the Exchange represents that all ETP Holder obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with the Exchange's rules and federal securities laws, and the Exchange will continue to monitor ETP Holders for compliance with such requirements, which are not changing as a result of the Multi-Class Fund Exemptive Relief order issued under the Investment Company Act.

²⁸ 15 U.S.C. 78f(b).

²⁹ 15 U.S.C. 78f(b)(5).

the ETF Class and the Multi-Class Fund each satisfies the requirements of this Rule, as applicable, on an initial and continued listing basis.³⁰ The Exchange will comply with all the requirements of Rule 19b-4(e) to specifically note that such Class ETF Shares are being listed on the Exchange pursuant to the proposed Rule.

Proposed Rule 5.2-E(j)(9)(e) provides that Class ETF Shares of each Multi-Class Fund will be listed and traded on the Exchange subject to application of proposed Rule 5.2-E(j)(9)(e)(2). Proposed Rule 5.2-E(j)(9)(e)(2) provides that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 5.5(m) of, Class ETF Shares under any of the following circumstances:

- if the Exchange becomes aware with respect to the Class ETF Shares: (i) the Multi-Class Fund is no longer eligible to operate an ETF Class as an exchange-traded fund pursuant to, or is otherwise no longer in compliance with the terms and conditions of, the Multi-Class Fund Exemptive Relief; or (ii) the ETF Class is no longer in compliance with the conditions and requirements of Rule 6c-11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief;
- if any of the other listing requirements set forth in proposed Rule 5.2-E(j)(9) are not continuously maintained;

³⁰ The Exchange notes that eligibility to operate in reliance on Rule 6c-11 or any applicable exemptive relief under the Investment Company Act does not necessarily mean that an investment company would be listed on the Exchange pursuant to proposed Rule 5.2-E(j)(9). To this point, an investment company that operates in reliance of exemptive relief providing for Class ETF Shares could alternatively be listed as Investment Company Units or Managed Fund Shares pursuant to Rules 5.2-E(j)(3) or 8.600-E, respectively, and would be subject to all requirements under each of those rules. Further to this point, in the event that Class ETF Shares listed on the Exchange preferred to be listed as a series of Investment Company Units or Managed Fund Shares (as applicable), nothing would preclude such security from changing to be listed as Investment Company Units or Managed Fund Shares (as applicable), as long as the security met each of the initial and continued listing obligations under the applicable rules.

- if, following the initial twelve-month period after commencement of trading on the Exchange of the Class ETF Shares, there are fewer than 50 beneficial holders of Class ETF Shares; or
- if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

The Exchange notes that issuers are required to notify the Exchange of any non-compliance with Rule 6c-11 under the Investment Company Act or any applicable exemptive relief thereunder, as described in proposed Rule 5.2-E(j)(9)(e)(1). Moreover, the Exchange may identify non-compliance through its own monitoring process.

Proposed Rule 5.2-E(j)(9)(h) provides that with respect to the Class ETF Shares, upon termination of the Multi-Class Fund or the ETF Class, as the case may be, the Exchange requires that the Class ETF Shares be removed from Exchange listing. The Exchange also notes that it will obtain a representation from the issuer of Class ETF Shares stating that the requirements of Rule 6c-11 and the applicable exemptive relief under the Investment Company Act will be continuously satisfied and that the issuer will notify the Exchange of any failure to do so.

The Exchange further believes that proposed Rule 5.2-E(j)(9) is designed to prevent fraudulent and manipulative acts and practices because of the robust surveillances in place on the Exchange as required under proposed Rule 5.2-E(j)(9)(g) along with the similarities of proposed Rule 5.2-E(j)(9) to the rules related to other securities that are already listed and traded on the Exchange and which would qualify as Class ETF Shares. ETF Shares are identical to Class ETF Shares except that Class ETF Shares have received exemptive relief to operate an exchange-traded fund class in addition to classes of shares that are not exchange-traded. As such, the Exchange believes because the ETF Class would be required to comply, among other things,

with the conditions and requirements of Rule 6c-11 under the Investment Company Act, similar to ETF Shares under Rule 5.2-E(j)(8), using Rule 5.2-E(j)(8) as the basis for proposed Rule 5.2-E(j)(9) is appropriate.

The Exchange believes that the proposal is consistent with Section 6(b)(1) of the Act³¹ in that, in addition to being designed to prevent fraudulent and manipulative acts and practices, the Exchange has the capacity to enforce proposed Rule 5.2-E(j)(9) by performing ongoing surveillance of Class ETF Shares listed on the Exchange in order to ensure that (i) the Multi-Class Fund is, and continues to be, eligible to operate an ETF Class as an exchange-traded fund pursuant to, and is otherwise in compliance with the terms and conditions of, the Multi-Class Fund Exemptive Relief, (ii) the ETF Class continues to be compliant with the conditions and requirements of Rule 6c-11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief, and (iii) the ETF Class and the Multi-Class Fund each satisfies the requirements of proposed Rule 5.2-E(j)(9), as applicable, on an initial and continuing basis. The Exchange believes that the manipulation concerns that such standards are intended to address are otherwise mitigated by a combination of the Exchange's surveillance procedures, and the Exchange's ability to halt trading and to suspend trading and commence delisting proceedings under proposed Rule 5.2-E(j)(9)(e)(2). The Exchange also believes that such concerns are further mitigated by enhancements to the arbitrage mechanism that have come from compliance with Rule 6c-11, specifically the additional flexibility provided through the use of custom baskets for creations and redemptions and the additional information made available to the public through the additional daily website disclosure obligations applicable under Rule 6c-11 under the

³¹ 15 U.S.C. 78f(b)(1).

Investment Company Act.³² The Exchange believes that the combination of these factors will act to keep Class ETF Shares trading near the value of their underlying holdings and further mitigate concerns around manipulation of Class ETF Shares on the Exchange.

The Exchange will monitor for compliance with Rule 6c-11 and any applicable exemptive relief in order to ensure that the continued listing standards are being met. Specifically, the Exchange plans to review the website of Class ETF Shares in order to ensure that the requirements of Rule 6c-11 are being met. The Exchange will also employ numerous intraday alerts that will notify Exchange personnel of trading activity throughout the day that is potentially indicative of certain disclosures not being made accurately or the presence of other unusual conditions or circumstances that could be detrimental to the maintenance of a fair and orderly market. As a backstop to the surveillances described above, the Exchange also notes that Rule 5.2-E(j)(9) requires an issuer of Class ETF Shares to promptly notify the Exchange of any failure to comply with Rule 6c-11 or the Investment Company Act.

To the extent that any of the requirements under Rule 6c-11 or the Multi-Class Fund Exemptive Relief under the Investment Company Act are not being met, the Exchange may halt trading in Class ETF Shares as provided in proposed Rule 5.2-E(j)(9)(e). Further, the Exchange may also suspend trading in and commence delisting proceedings for Class ETF Shares where such securities are not in compliance with the applicable listing standards or where the Exchange believes that further dealings on the Exchange are inadvisable. As discussed above, the Exchange also notes that proposed Rule 5.2-E(j)(9) requires any issuer to provide the Exchange with prompt notification after it becomes aware of any non-compliance with the proposed rule,

³² The Exchange notes that the Commission came to a similar conclusion in several places in the ETF Rule Adopting Release. See ETF Rule Adopting Release at 15-18; 60-61; 69-70; 78-79; 82-84; and 95-96.

which would include any failure of the issuer to comply with Rule 6c-11 or the Multi-Class Fund Exemptive Relief under the Investment Company Act.

Further, the Exchange also represents that its surveillance procedures are adequate to properly monitor the trading of the Class ETF Shares in all trading sessions and to deter and detect violations of Exchange rules. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which are currently applicable to Investment Company Units, Managed Fund Shares, and ETF Shares, among other product types, to monitor trading in Class ETF Shares. The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in Class ETF Shares and certain of their applicable underlying components with other markets that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange may obtain information regarding trading in Class ETF Shares and certain of their applicable underlying components from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Additionally, FINRA, on behalf of the Exchange, is able to access trade information for certain fixed income securities that may be held by the Multi-Class Fund for the Class ETF Shares reported to FINRA's TRACE. FINRA also can access data obtained from the MSRB's EMMA system relating to municipal bond trading activity for surveillance purposes in connection with trading in Class ETF Shares, to the extent that the Multi-Class Fund for the Class ETF Shares holds municipal securities. Finally, as noted above, the issuer of Class ETF Shares will be required to comply with Rule 10A-3 under the Act for the initial and continued listing of Class ETF Shares, as provided under Rule 5.3-E.

The Exchange believes that permitting Class ETF Shares to list on the Exchange will help perfect the mechanism of a free and open market and, in general, will protect investors and the public interest in that it will permit the listing and trading of Class ETF Shares, consistent with the applicable exemptive relief, and in a manner that will benefit investors. Specifically, the Exchange believes that the relief proposed in the Applications and the expected benefits of the Class ETF Shares described above would be to the benefit of investors.

The Exchange also believes that proposed Rule 5.2-E(j)(9) provisions which explicitly provide the initial and continued listing standards applicable to Class ETF Shares, including the suspension of trading or removal standards, are designed to promote transparency and clarity in the Exchange's Rules.

The Exchange also believes that the corresponding changes to add Class ETF Shares in the Exchange's corporate governance requirements under Rule 1.1 and Rule 5.3-E discussed above will add clarity to the Exchange's rulebook. Investment Company Units, Managed Fund Shares, and ETF Shares are similarly included in these provisions. Therefore, the Exchange believes these are non-substantive changes meant only to subject Class ETF Shares to the same exemptions and provisions currently applicable to Investment Company Units, Managed Fund Shares, and ETF Shares so that the treatment of these open-end management investment companies is consistent under the Exchange's rules.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

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 proposal, by permitting the listing and trading of Class ETF Shares under

exemptive relief from the Investment Company Act and the rules and regulations thereunder, 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. Proceedings to Determine Whether to Approve or Disapprove SR-NYSEARCA-2025-39, as Modified by Amendment No. 1, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act³³ to determine whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,³⁴ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposal’s consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be “designed to prevent fraudulent and manipulative acts and practices” and “to protect investors and the public interest.”³⁵

The Commission asks that commenters address the sufficiency of the Exchange’s statements in support of the proposal, which are set forth in the Notice and Amendment No. 1, in

³³ 15 U.S.C. 78s(b)(2)(B).

³⁴ Id.

³⁵ 15 U.S.C. 78f(b)(5).

addition to any other comments they may wish to submit about the proposed rule change, as modified by Amendment No. 1. In particular, the Commission seeks comment on whether the proposal is consistent with Section 6(b)(5) of the Act,³⁶ and specifically, whether the proposed rule change is designed to prevent fraudulent and manipulative acts and practices.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) or any other provision of the Act, and the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.³⁷

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

Comments may be submitted by any of the following methods:

³⁶ Id.

³⁷ Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding – either oral or notice and opportunity for written comments – is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>);
or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2025-39 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-2025-39. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>).

Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright

protection. All submissions should refer to file number SR-NYSEARCA-2025-39 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Rebuttal comments should be submitted by [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁸

Sherry R. Haywood,

Assistant Secretary.

³⁸ 17 CFR 200.30-3(a)(57).