

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90091; File No. SR-NYSE-2020-77)

October 5, 2020

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Adopt New Rule 8.601 (Active Proxy Portfolio Shares) and Rule 8.900 (Managed Portfolio Shares), Amend the Preamble to Rule 8P, and Amend Section 302.00 of the Listed Company Manual

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on September 22, 2020, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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 (1) adopt new Rule 8.601, (2) adopt new Rule 8.900, (3) amend the preamble to Rule 8P, and (4) amend Listed Company Manual Section 302.00. The proposed rule 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 adopt new Rules 8.601 and 8.900 to list Active Proxy Portfolio Shares and Managed Portfolio Shares, respectively, on the Exchange. These proposed rules are based on the NYSE Arca, Inc. (“NYSE Arca”) rules of the same number, with non-substantive changes. The Exchange also proposes to amend the preamble to Rule 8P to permit the listing of Active Proxy Portfolio Shares and Managed Portfolio Shares on the Exchange. The Exchange also proposes to amend Section 302.00 of the Listed Company Manual to include Active Proxy Portfolio Shares and Managed Portfolio Shares listed pursuant to proposed Rules 8.601 and 8.900 among the securities for which the annual shareholders’ meeting requirement does not apply.

Proposed Rule 8.601

The Exchange proposes to add new Rule 8.601 to permit 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. Proposed Rule 8.601 is based on NYSE Arca Rule 8.601-E without any substantive differences.

Proposed Listing Rules

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

Proposed Rule 8.601(b) provides that Rule 8.601 would be applicable only to Active Proxy Portfolio Shares and that, except to the extent inconsistent with Rule 8.601, 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(b) provides further that Active Proxy Portfolio Shares would be included within the definition of “security” or “securities” as such terms are used in the Rules of the Exchange.

Proposed Rule 8.601(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(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(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 (the “1940 Act”)

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 1940 Act 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

Proposed Rule 8.601(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 UTP) as the official source for calculating and reporting information relating to such series, including, but not limited

⁴ The information required in proposed Rule 8.601(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(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.

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(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(d) sets forth initial and continued listing criteria applicable to Active Proxy Portfolio Shares. Proposed Rule 8.601(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 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.

Proposed Rule 8.601(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 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 (proposed Rule 8.601(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(d)(2)(B)(i)).

Proposed Rule 8.601(d)(2)(C) provides that the Exchange would consider the suspension of trading in, and will commence delisting proceedings under Rule 5.5(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 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 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(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. If a series of Active Proxy Portfolio Shares is trading on the Exchange pursuant to UTP, the Exchange shall halt trading in that series as specified in Rule 7.18(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 made available 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, as applicable.

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

Proposed Rule 8.601(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 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 Rule 7.34(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 the Financial Industry Regulatory Authority, Inc. ("FINRA"), on behalf of the Exchange, make available to the Exchange or FINRA the daily Actual 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 Actual Portfolio and/or Proxy Portfolio or has access to non-public information regarding the Investment Company's Actual Portfolio and/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 and/or 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.

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 Rule 8.600 and for which a "Disclosed Portfolio" is required to be disseminated at least once daily,⁵ 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

⁵ Rule 8.600(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. Rule 8.600(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.

applicable to open-end management investment companies registered under the 1940 Act.⁶ 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 believes that market makers will be able to make efficient and liquid markets priced near the intraday value of exchange-traded funds (“ETFs”), 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 ETPs.⁷ For Active Proxy Portfolio Shares, market makers

⁶ 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 series of Active Proxy Portfolio Shares’ Statement of Additional Information (“SAI”), its Shareholder Reports, its Form N-CSR, filed twice a year, and its Form N-CEN, filed annually. A series of Active Proxy Portfolio Shares’ SAI and Shareholder Reports will be 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.

⁷ 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

may use the knowledge of a fund's means of achieving its investment objective, as described in the applicable fund registration statement (the "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.

Creations and Redemptions of Shares

Active Proxy Portfolio Shares of a fund may be offered, issued, and sold to investors only in specified minimum size "Creation Units" through a fund's distributor (the "Distributor") on a

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.

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 at the end of each business day (ordinarily 4:00 p.m. E.T.). Creation Units will only be sold and redeemed on business days. 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 Active Proxy Portfolio Shares will be based on the 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.

A fund’s 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 (as defined below), to have the purchase or redemption, as applicable, be made entirely or in part in cash. 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”) 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.

Availability of Information

The following information will be publicly available on a fund’s website before the commencement of trading in a series of Active Proxy Portfolio Shares on each business day:

- The Proxy Portfolio holdings (including the identity and quantity of investments in the Proxy Portfolio).
- The historical “Tracking Error” between the fund’s last published NAV per share and the value, on a per share basis, of the fund’s Proxy Portfolio calculated as of the close of trading on the prior business day.
- The “Proxy Overlap,” which is the percentage weight overlap between the Proxy Portfolio’s holdings compared to the Actual Portfolio’s holdings that formed the basis for the 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.

Typical mutual fund-style annual, semi-annual, and quarterly disclosures contained in a fund’s Commission filings will be provided on the fund’s website on a current basis.⁸ Thus, each issuer of a series of Active Proxy Portfolio Shares 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.

⁸ See note 6, *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 Investment Company, 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.

Information regarding market price and trading volume of the shares 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 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. Intraday pricing information for all constituents of the Proxy Portfolio that are exchange-traded, which includes all eligible instruments except cash and cash equivalents, will be available on the exchanges on which they are traded and through subscription services. Intraday pricing information for cash equivalents will be available through subscription services and/or pricing services.

Trading Halts

As proposed above, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in a series of Active Proxy Portfolio Shares.⁹ Trading will be subject to proposed Rule 8.601(d)(2)(D), which sets forth circumstances under which trading in a series of Active Proxy Portfolio Shares will be halted.

Specifically, proposed Rule 8.601(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

⁹ See Rule 7.12.

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 UTP, the Exchange shall halt trading in that series as specified in Rule 7.18(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 Active Proxy Portfolio 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 Exchange in all trading sessions in accordance with Rule 7.34(a). As provided in Rule 7.6, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the Exchange 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.

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, pursuant to proposed Rule 8.601(d)(1)(B), the Exchange, prior to commencement of trading in a series, will obtain a representation from the issuer that the NAV per share will be calculated daily and that the NAV,

Proxy Portfolio, and the Actual Portfolio for a fund 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 FINRA will continue to monitor Exchange members for compliance with such requirements.

Surveillance

Trading in series of Active Proxy Portfolio 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.¹⁰ The Exchange believes 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 other

¹⁰ 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.

markets and other entities that are members of the Intermarket Surveillance Group (“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.¹¹

As noted above, proposed Commentary .03 to Rule 8.601 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 Actual 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. 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

¹¹ For a list of the current members of ISG, see www.isgportal.org.

in compliance with Rule 8.601. The Exchange notes that proposed Commentary .01 to Rule 8.601 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. 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.

The Exchange will also require each issuer of a fund to 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 Rule 5.5(m).

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

Proposed Rule 8.900

The Exchange proposes to add new Rule 8.900 to permit the listing and trading, or trading pursuant to UTP, of Managed Portfolio Shares, which are securities issued by an actively managed open-end investment management company. Proposed Rule 8.900 is based on NYSE Arca Rule 8.900-E without any substantive differences.

Proposed Listing Rules

Proposed Rule 8.900(a) provides that the Exchange will consider for trading, whether by listing or pursuant to UTP, Managed Portfolio Shares that meet the criteria of Rule 8.900.

Proposed Rule 8.900(b) provides that Rule 8.900 is applicable only to Managed Portfolio

Shares and that, except to the extent inconsistent with Rule 8.900, 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 8.900(b) provides further that Managed Portfolio Shares are included within the definition of "security" or "securities" as such terms are used in the Rules of the Exchange.

Proposed Rule 8.900(b)(1) provides that the Exchange will file separate proposals under Section 19(b) of the Act before the listing and trading of a series of Managed Portfolio Shares. The proposed rule further provides that all statements or representations contained in such rule 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 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 Rule 8.900(b)(2) provides that transactions in Managed Portfolio Shares will occur during the trading hours specified in Rule 7.34(a).

Proposed Rule 8.900(b)(3) provides that the Exchange will implement and maintain written surveillance procedures for Managed 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 Managed Portfolio Shares.

Proposed Rule 8.900(b)(4) provides that, if the investment adviser to the Investment Company issuing Managed 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 affiliates, as applicable,

with respect to access to information concerning the composition of and/or changes to such Investment Company portfolio and/or the Creation Basket. 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 portfolio composition or changes thereto or the Creation Basket must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket.

Proposed Rule 8.900(b)(5) provides that any person or entity, including an AP Representative, custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket, must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. 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 portfolio or Creation Basket.

Proposed Rule 8.900(c)(1) defines the term "Managed Portfolio Share" as a security that (a) represents an interest in an 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 Creation Unit, or multiples thereof, in return for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net

asset value and delivered to the Authorized Participant (as defined in the Investment Company's Form N-1A filed with the Commission) through a Confidential Account; (c) when aggregated into a Redemption Unit, or multiples thereof, may be redeemed for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value delivered to the Confidential Account for the benefit of the Authorized Participant; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

Proposed Rule 8.900(c)(2) defines the term "Verified Intraday Indicative Value" ("VIIV") as the indicative value of a Managed Portfolio Share based on all of the holdings of a series of Managed Portfolio Shares as of the close of business on the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, priced and disseminated in one second intervals during the Core Trading Session by the Reporting Authority.

Proposed Rule 8.900(c)(3) defines the term "AP Representative" as an unaffiliated broker-dealer, with which an Authorized Participant has signed an agreement to establish a Confidential Account for the benefit of such Authorized Participant, that will deliver or receive, on behalf of the Authorized Participant, all consideration to or from the Investment Company in a creation or redemption. An AP Representative will not be permitted to disclose the Creation Basket to any person, including the Authorized Participants.

Proposed Rule 8.900(c)(4) defines the term "Confidential Account" as an account owned by an Authorized Participant and held with an AP Representative on behalf of the Authorized Participant. The account will be established and governed by contractual agreement between the AP Representative and the Authorized Participant solely for the purposes of creation and

redemption, while keeping confidential the Creation Basket constituents of each series of Managed Portfolio Shares, including from the Authorized Participant. The books and records of the Confidential Account will be maintained by the AP Representative on behalf of the Authorized Participant.

Proposed Rule 8.900(c)(5) defines the term “Creation Basket” as on any given business day the names and quantities of the specified instruments (and/or an amount of cash) that are required for an AP Representative to deposit in-kind on behalf of an Authorized Participant in exchange for a Creation Unit and the names and quantities of the specified instruments (and/or an amount of cash) that will be transferred in-kind to an AP Representative on behalf of an Authorized Participant in exchange for a Redemption Unit, which will be identical and will be transmitted to each AP Representative before the commencement of trading.

Proposed Rule 8.900(c)(6) defines the term “Creation Unit” as a specified minimum number of Managed Portfolio Shares issued by an Investment Company at the request of an Authorized Participant in return for a designated portfolio of instruments and/or cash.

Proposed Rule 8.900(c)(7) defines the term “Redemption Unit” as a specified minimum number of Managed Portfolio Shares that may be redeemed to an Investment Company at the request of an Authorized Participant in return for a portfolio of instruments and/or cash.

Proposed Rule 8.900(c)(8) defines the term “Reporting Authority” in respect of a particular series of Managed 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 Managed Portfolio Shares (if the Exchange is trading such series pursuant to UTP), as the official source for calculating and reporting information relating to such series, including, but not limited to, the net asset value, the VIIV, or other information relating to the issuance, redemption, or trading of

Managed Portfolio Shares. A series of Managed Portfolio Shares may have more than one Reporting Authority, each having different functions.

Proposed Rule 8.900(c)(9) provides that the term “Normal Market Conditions” includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operations issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruptions, or any similar intervening circumstance.

Proposed Rule 8.900(d) sets forth initial listing criteria applicable to Managed Portfolio Shares. Proposed Rule 8.900(d)(1)(A) provides that, for each series of Managed Portfolio Shares, the Exchange will establish a minimum number of Managed Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange. In addition, proposed Rule 8.900(d)(1)(B) provides that the Exchange will obtain a representation from the issuer of each series of Managed Portfolio Shares that the NAV per share for the series will be calculated daily and that the NAV will be made available to all market participants at the same time. Proposed Rule 8.900(d)(1)(C) provides that all Managed Portfolio Shares shall have a stated investment objective, which shall be adhered to under Normal Market Conditions.

Proposed Rule 8.900(d)(2) provides that each series of Managed Portfolio Shares will be listed and traded subject to application of the following continued listing criteria. Proposed Rule 8.900(d)(2)(A) provides that the VIIV for Managed Portfolio Shares will be widely disseminated by the Reporting Authority and/or by one or more major market data vendors in one second intervals during the Exchange’s Core Trading Session (as defined in Rule 7.34) and will be disseminated to all market participants at the same time.

Proposed Rule 8.900(d)(2)(B) provides that the Exchange will consider the suspension of

trading in, and will commence delisting proceedings under Rule 5.5(m) for, a series of Managed Portfolio Shares under any of the following circumstances: (i) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Portfolio Shares, there are fewer than 50 beneficial holders of the series of Managed Portfolio Shares; (ii) if the Exchange has halted trading in a series of Managed Portfolio Shares because the VIIV is interrupted pursuant to Rule 8.900(d)(2)(C)(ii) and such interruption persists past the trading day in which it occurred or is no longer available; (iii) if the Exchange has halted trading in a series of Managed Portfolio Shares because the NAV with respect to such series of Managed Portfolio Shares is not disseminated to all market participants at the same time, the holdings of such series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act, or such holdings are not made available to all market participants at the same time pursuant to Rule 8.900(d)(2)(C)(ii) and such issue persists past the trading day in which it occurred; (iv) if the Exchange has halted trading in a series of Managed Portfolio Shares pursuant to Rule 8.900(d)(2)(C)(i), such issue persists past the trading day in which it occurred; (v) if the Investment Company issuing the Managed Portfolio Shares has failed to file any filings required by the Commission or if the Exchange is 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 the series of Managed Portfolio Shares; (vi) if any of the continued listing requirements set forth in Rule 8.900 are not continuously maintained; (vii) 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

Managed Portfolio Shares, are not continuously maintained; or (viii) 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 8.900(d)(2)(C)(i) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed 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 Managed 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 portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Proposed Rule 8.900(d)(2)(C)(ii) provides that, if the Exchange becomes aware that: (a) the Verified Intraday Indicative Value of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (b) the net asset value with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (c) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (d) such holdings are not made available to all market participants at the same time (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares), it will halt trading in such series until such time as the Verified Intraday Indicative Value, the net asset value, or the holdings are available, as required.

Proposed Rule 8.900(d)(2)(D) provides that, upon termination of an Investment Company, the Exchange requires that Managed Portfolio Shares issued in connection with such entity be removed from Exchange listing.

Proposed Rule 8.900(d)(2)(E) provides that voting rights shall be as set forth in the applicable Investment Company prospectus and/or statement of additional information.

Proposed Rule 8.900(e), which relates to 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 open-end management investment company in connection with issuance of Managed Portfolio Shares; the VIIV; the amount of any dividend equivalent payment or cash distribution to holders of Managed Portfolio Shares; NAV; or other information relating to the purchase, redemption, or trading of Managed 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 Rule 8.900(f), which relates to disclosures, provides that the provisions of subparagraph (f) apply only to series of Managed Portfolio Shares that are the subject of an order

by the Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the 1940 Act and are not otherwise subject to prospectus delivery requirements under the Securities Act of 1933. The Exchange will inform its member organizations regarding application of subparagraph (f) to a particular series of Managed Portfolio Shares by means of an information circular prior to commencement of trading in such series.

The Exchange requires that member organizations provide to all purchasers of a series of Managed Portfolio Shares a written description of the terms and characteristics of those securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such a purchaser. In addition, member organizations shall include such a written description with any sales material relating to a series of Managed Portfolio Shares that is provided to customers or the public. Any other written materials provided by a member organization to customers or the public making specific reference to a series of Managed Portfolio Shares as an investment vehicle must include a statement in substantially the following form: “A circular describing the terms and characteristics of (the series of Managed Portfolio Shares) has been prepared by the (open-end management investment company name) and is available from your broker. It is recommended that you obtain and review such circular before purchasing (the series of Managed Portfolio Shares).”

A member organization carrying an omnibus account for a non-member organization broker-dealer is required to inform such non-member organization that execution of an order to purchase a series of Managed Portfolio Shares for such omnibus account will be deemed to constitute agreement by the non-member organization to make such written description available

to its customers on the same terms as are directly applicable to member organizations under this rule.

Upon request of a customer, a member organization shall also provide a prospectus for the particular series of Managed Portfolio Shares.

Key Features of Managed Portfolio Shares

While each series of Managed Portfolio Shares will be actively managed and, to that extent, will be similar to Managed Fund Shares (as defined in Rule 8.600), Managed Portfolio Shares differ from Managed Fund Shares in the following important respects. First, in contrast to Managed Fund Shares, which require a “Disclosed Portfolio” to be disseminated at least once daily,¹² the portfolio for a series of Managed Portfolio Shares will be disclosed quarterly in accordance with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act.¹³ The composition of the portfolio of a series of Managed Portfolio Shares would not be available at commencement of Exchange listing and/or trading. Second, in connection with the creation and redemption of shares in Creation Unit or Redemption Unit size (as described below), the delivery of any portfolio securities in kind will be effected through a Confidential Account (as described below) for the benefit of the creating or redeeming AP (as described below in “Creation and Redemption of Shares”) without disclosing the identity of such securities to the AP.

For each series of Managed Portfolio Shares, an estimated value -- the VIIV-- that reflects an estimated intraday value of a fund’s portfolio will be disseminated. Specifically, the VIIV will be based upon all of a series’ holdings as of the close of the prior business day and, for

¹² See note 5, supra.

¹³ See note 6, supra.

corporate actions, based on the applicable holdings as of the opening of business on the current business day, and will be widely disseminated by the Reporting Authority and/or one or more major market data vendors in one second intervals during the Exchange's Core Trading Session. The dissemination of the VIIV will allow investors to determine the estimated intra-day value of the underlying portfolio of a series of Managed Portfolio Shares and will provide a close estimate of that value throughout the trading day.

The Exchange believes that market makers will be able to make efficient and liquid markets priced near the ETF's intraday value as long as a VIIV is disseminated in one second intervals, 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.¹⁴ For Managed 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, 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 Managed Portfolio Shares without precise

¹⁴ See note 7, supra.

knowledge¹⁵ of a fund's underlying portfolio.¹⁶ 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.

To protect the identity and weightings of the portfolio holdings, a series of Managed Portfolio Shares would sell and redeem their shares in Creation Units and Redemption Units to APs only through an AP Representative. As such, on each business day, before commencement of trading in shares on the Exchange, each series of Managed Portfolio Shares will provide to an AP Representative of each AP the names and quantities of the instruments comprising a Creation Basket, i.e. the Deposit Instruments or "Redemption Instruments" and the estimated "Balancing Amount" (if any),¹⁷ for that day (as further described below). This information will permit APs to purchase Creation Units or redeem Redemption Units through an in-kind transaction with a

¹⁵ Using the various trading methodologies described above, both APs and other market participants will be able to hedge exposures by trading correlative portfolios, securities or other proxy instruments, thereby enabling an arbitrage functionality throughout the trading day. For example, if an AP believes that shares of a fund are trading at a price that is higher than the value of its underlying portfolio based on the VIIV, the AP may sell shares short and purchase securities that the AP believes will track the movements of a fund's portfolio until the spread narrows and the AP executes offsetting orders or the AP enters an order through its AP Representative to create fund shares. Upon the completion of the Creation Unit, the AP will unwind its correlative hedge. Similarly, a non-AP market participant would be able to perform an identical function but, because it would not be able to create or redeem directly, would have to employ an AP to create or redeem shares on its behalf.

¹⁶ APs that enter into their own separate Confidential Accounts shall have enough information to ensure that they are able to comply with applicable regulatory requirements. For example, for purposes of net capital requirements, the maximum Securities Haircut applicable to the securities in a Creation Basket, as determined under Rule 15c3-1, will be disclosed daily on each fund's website.

¹⁷ The Balancing Amount is the cash amount necessary for the applicable fund to receive or pay to compensate for the difference between the value of the securities delivered as part of a redemption and the NAV, to the extent that such values are different.

fund, as described below.

Creation and Redemptions of Shares

In connection with the creation and redemption of Creation Units and Redemption Units, the delivery or receipt of any portfolio securities in-kind will be required to be effected through a Confidential Account¹⁸ with an AP Representative,¹⁹ which will be a broker-dealer such as broker-dealer affiliates of JP Morgan Chase, State Street Bank and Trust, or Bank of New York Mellon, for the benefit of an AP.²⁰ An AP must be a Depository Trust Company (“DTC”) Participant that has executed a “Participant Agreement” with the applicable distributor (the “Distributor”) with respect to the creation and redemption of Creation Units and Redemption Units and formed a Confidential Account for its benefit in accordance with the terms of the Participant Agreement. For purposes of creations or redemptions, all transactions will be

¹⁸ Transacting through a Confidential Account is designed to be very similar to transacting through any broker-dealer account, except that the AP Representative will be bound to keep the names and weights of the portfolio securities confidential. Each service provider that has access to the identity and weightings of securities in a fund’s Creation Basket or portfolio securities, such as a fund’s custodian or pricing verification agent, shall be restricted contractually from disclosing that information to any other person, or using that information for any purpose other than providing services to the fund. To comply with certain recordkeeping requirements applicable to APs, the AP Representative will maintain and preserve, and make available to the Commission, certain required records related to the securities held in the Confidential Account.

¹⁹ Each AP shall enter into its own separate Confidential Account with an AP Representative.

²⁰ Each fund will identify one or more entities to enter into a contractual arrangement with the fund to serve as an AP Representative. In selecting entities to serve as AP Representatives, a fund will obtain representations from the entity related to the confidentiality of the fund’s Creation Basket and portfolio securities, the effectiveness of information barriers, and the adequacy of insider trading policies and procedures. In addition, as a broker-dealer, Section 15(g) of the Act requires the AP Representative to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by the AP Representative or any person associated with the AP Representative.

effected through the respective AP's Confidential Account, for the benefit of the AP without disclosing the identity of such securities to the AP. A fund will offer and redeem Creation Units and Redemption Units on a continuous basis at the NAV per Share next determined after receipt of an order in proper form. The NAV per Share of each fund will be determined as of the close of regular trading each business day. Funds will sell and redeem Creation Units and Redemption Units only on business days.

Each AP Representative will be given, before the commencement of trading each business day, the Creation Basket 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. In order to keep costs low and permit funds to be as fully invested as possible, shares will be purchased and redeemed in Creation Units and Redemption Units and generally on an in-kind basis. Accordingly, except where the purchase or redemption will include cash under the circumstances required or determined permissible by a fund, APs will be required to purchase Creation Units by making an in-kind deposit of specified instruments ("Deposit Instruments"), and APs redeeming their shares will receive an in-kind transfer of Redemption Instruments through the AP Representative in their Confidential Account.²¹

In the case of a creation, the AP²² would enter into an irrevocable creation order with a fund and then direct the AP Representative to purchase the necessary basket of portfolio

²¹ Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the 1933 Act.

²² An AP will issue execution instructions to the AP Representative and be responsible for all associated profit or losses. Like a traditional ETF, the AP has the ability to sell the basket securities at any point during the Core Trading Session.

securities. The AP Representative would then purchase the necessary securities in the Confidential Account. In purchasing the necessary securities, the AP Representative would use methods such as breaking the purchase into multiple purchases and transacting in multiple marketplaces. Once the necessary basket of securities has been acquired, the purchased securities held in the Confidential Account would be contributed in-kind to the applicable fund.

Other market participants that are not APs will not have the ability to create or redeem shares directly with a fund. Rather, if other market participants wish to create or redeem shares in a fund, they will have to do so through an AP.

Placement of Purchase Orders

Each fund will issue shares through the Distributor on a continuous basis at NAV. The Exchange represents that the issuance of shares will operate in a manner substantially similar to that of other ETFs. Each fund will issue shares only at the NAV per share next determined after an order in proper form is received.

The Distributor will furnish acknowledgements to those placing orders that the orders have been accepted, but the Distributor may reject any order which is not submitted in proper form, as described in a fund's prospectus or Statement of Additional Information ("SAI"). The NAV of each fund is expected to be determined once each business day at a time determined by the board of the Investment Company ("Board"), currently anticipated to be as of the close of the regular trading session on the NYSE (ordinarily, 4:00 p.m. E.T.) (the "Valuation Time"). Each fund will establish a cut-off time ("Order Cut-Off Time") for purchase orders in proper form. To initiate a purchase of shares, an AP must submit to the Distributor an irrevocable order to purchase such shares after the most recent prior Valuation Time.

Purchases of shares will be settled in-kind and/or cash for an amount equal to the

applicable NAV per share purchased plus applicable “Transaction Fees,” as discussed below.

Generally, all orders to purchase Creation Units must be received by the Distributor no later than the end of Core Trading Session on the date such order is placed (“Transmittal Date”) in order for the purchaser to receive the NAV per share determined on the Transmittal Date. In the case of custom orders made in connection with creations or redemptions in whole or in part in cash, the order must be received by the Distributor, no later than the Order Cut-Off Time.²³

Authorized Participant Redemption

The shares may be redeemed to a fund in Redemption Unit size or multiples thereof as described below. Redemption orders of Redemption Units must be placed by or through an AP (“AP Redemption Order”). Each fund will establish an Order Cut-Off Time for redemption orders of Redemption Units in proper form. Redemption Units of a fund will be redeemable at their NAV per Share next determined after receipt of a request for redemption by the Investment Company in the manner specified below before the Order Cut-Off Time. To initiate an AP Redemption Order, an AP must submit to the Distributor an irrevocable order to redeem such Redemption Unit after the most recent prior Valuation Time but not later than the Order Cut-Off Time.

In the case of a redemption, the AP would enter into an irrevocable redemption order, and then instruct the AP Representative to sell the underlying basket of securities that it will receive in the redemption. As with the purchase of securities, the AP Representative would be required to obfuscate the sale of the portfolio securities it will receive as redemption proceeds using similar tactics.

²³ A “custom order” is any purchase or redemption of shares made in whole or in part on a cash basis, as provided in the Registration Statement.

Consistent with the provisions of Section 22(e) of the 1940 Act and Rule 22e-2 thereunder, the right to redeem will not be suspended, nor payment upon redemption delayed, except for: (1) any period during which the Exchange is closed other than customary weekend and holiday closings, (2) any period during which trading on the Exchange is restricted, (3) any period during which an emergency exists as a result of which disposal by a fund of securities owned by it is not reasonably practicable or it is not reasonably practicable for a fund to determine its NAV, and (4) for such other periods as the Commission may by order permit for the protection of shareholders.

It is expected that redemptions will occur primarily in-kind, although redemption payments may also be made partly or wholly in cash. The Participant Agreement signed by each AP will require establishment of a Confidential Account to receive distributions of securities in-kind upon redemption.²⁴ Each AP will be required to open a Confidential Account with an AP Representative in order to facilitate orderly processing of redemptions.

After receipt of a Redemption Order, a fund's custodian ("Custodian") will typically deliver securities to the Confidential Account with a value approximately equal to the value of the shares²⁵ tendered for redemption at the Cut-Off time. The Custodian will make delivery of the securities by appropriate entries on its books and records transferring ownership of the

²⁴ The terms of each Confidential Account will be set forth as an exhibit to the applicable Participant Agreement, which will be signed by each AP. The Authorized Participant will be free to choose an AP Representative for its Confidential Account from a list of broker-dealers that have signed confidentiality agreements with a fund. The Authorized Participant will be free to negotiate account fees and brokerage charges with its selected AP Representative. The Authorized Participant will be responsible to pay all fees and expenses charged by the AP Representative of its Confidential Account.

²⁵ If the NAV of the shares redeemed differs from the value of the securities delivered to the applicable Confidential Account, the applicable fund will receive or pay a cash Balancing Amount to compensate for the difference between the value of the securities delivered and the NAV.

securities to the AP's Confidential Account, subject to delivery of the shares redeemed. The AP Representative of the Confidential Account will in turn liquidate the securities based on instructions from the AP. The AP Representative will pay the liquidation proceeds net of expenses plus or minus any cash Balancing Amount to the AP through DTC. The redemption securities that the Confidential Account receives are expected to mirror the portfolio holdings of a fund pro rata. To the extent a fund distributes portfolio securities through an in-kind distribution to more than one Confidential Account for the benefit of the accounts' respective APs, each fund expects to distribute a pro rata portion of the portfolio securities selected for distribution to each redeeming AP.

If the AP would receive a security that it is restricted from receiving, for example if the AP is engaged in a distribution of the security, a fund will deliver cash equal to the value of that security. APs will provide the AP Representative with a list of restricted securities applicable to the AP on a daily basis, and a fund will substitute cash for those securities in the applicable Confidential Account.

The Investment Company will accept a Redemption Order in proper form. A Redemption Order is subject to acceptance by the Investment Company and must be preceded or accompanied by an irrevocable commitment to deliver the requisite number of shares. At the time of settlement, an AP will initiate a delivery of the shares plus or minus any cash Balancing Amounts, and less the expenses of liquidation.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Managed Portfolio Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of

Managed Portfolio Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products. The Exchange will require the issuer of each series of Managed Portfolio Shares, upon initial listing and periodically thereafter, to provide a representation that it is in compliance with Rule 8.900. 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 8.900.

The Exchange will require each issuer of a fund to represent that it will advise the Exchange of any failure by a fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange 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 proceedings under Rule 5.5(m).

Specifically, the Exchange will implement real-time surveillances that monitor for the continued dissemination of the VIIV. The Exchange will also have surveillances designed to alert Exchange personnel where shares of a series of Managed Portfolio Shares are trading away from the VIIV. As noted in proposed Rule 8.900(b)(3), the Investment Company's investment adviser will upon request make available to the Exchange and/or FINRA, on behalf of the Exchange, the daily portfolio holdings of each series of Managed Portfolio Shares. The Exchange believes that this is appropriate because it will provide the Exchange or FINRA, on behalf of the Exchange, with access to the daily portfolio holdings of any series of Managed Portfolio Shares upon request on an as needed basis. 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 Managed 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 the shares.

The Exchange notes that any equity instruments or futures held by a fund operating under an exemptive order would trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.²⁶ While future exemptive relief applicable to Managed Portfolio Shares may expand the investable universe, the Exchange notes that proposed Rule 8.900(b)(1) would require the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Managed Portfolio Shares and such proposal would describe the investable universe for any such series of Managed Portfolio Shares along with the Exchange's surveillance procedures applicable to such series.

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

²⁶ For a list of the current members of ISG, see www.isgportal.com. The Exchange notes that cash equivalents may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

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

Trading Halts

As proposed above, the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed 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 Managed Portfolio Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the securities and/or the financial instruments comprising the portfolio; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Additionally, the Exchange would halt trading as soon as practicable where the Exchange becomes aware that: (1) the VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (2) the net asset value with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (3) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (4) such holdings are not made available to all market participants at the same time, (except as otherwise permitted under a currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares) (collectively, “Availability of Information Halts”). The Exchange would halt trading in such series of Managed Portfolio Shares until such time as the VIIV, the NAV, or the holdings are available, as required.

Availability of Information

As noted above, 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 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.

Information regarding market price and trading volume of the shares 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 will be published daily in the financial section of newspapers. Quotation and last sale information for the shares will be available via the CTA high-speed line. In addition, the VIIV, as defined in proposed Rule 8.900(c)(2), will be widely disseminated by the Reporting Authority and/or one or more major market data vendors in one second intervals during the Exchange's Core Trading Session.

Trading Rules

The Exchange deems Managed Portfolio Shares to be equity securities, thus rendering trading in the shares subject to the Exchange's existing rules governing the trading of equity securities. Managed Portfolio Shares will trade on the Exchange only during the trading hours specified in Rule 7.34(a). As provided in Rule 7.6, the MPV for quoting and entry of orders in equity securities traded on the Exchange 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.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its member organizations in an Information 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) how information regarding the VIIV is disseminated; (3) the requirement that member organizations deliver a prospectus to investors purchasing newly issued shares prior to or concurrently with the confirmation of a transaction; (4) trading information; and (5) that the portfolio holdings of the shares are not disclosed on a daily basis.

In addition, the Bulletin will reference that funds are 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.

Rule 8P Preamble

The Exchange proposes that a security listed on the Exchange under either proposed Rule 8.601 or 8.900 would trade no differently than other securities listed on the Exchange, including that such securities would be assigned to a designated market maker (“DMM”) pursuant to Rule 103B.

As described above, the portfolios of both Active Proxy Portfolio Shares and Managed Portfolio Shares are not disclosed on a real-time basis and therefore market participants, including the DMM, would not know whether a specific NYSE-listed security would be included in the portfolio of such products. Because DMMs would not know whether an NYSE-listed security would be a component of a series of Active Proxy Portfolio Shares or Managed Portfolio Shares, the Exchange proposes to revise the preamble to Rule 8P, governing the trading

of certain exchange traded products (“ETPs”). The preamble currently states that the Exchange will not list pursuant to Rule 8P any ETPs that have any component NMS Stock that is listed on the Exchange or that is based on, or represents an interest in, an underlying index or reference asset that includes an NMS Stock listed on the Exchange. To reflect that the portfolios of ETPs that are Active Proxy Portfolio Shares and Managed Portfolio Shares would not be publicly available in real-time and to permit the listing and trading of such ETPs on the Exchange, the Exchange proposes to revise the preamble to state that it would not apply to ETPs listed pursuant to proposed Rules 8.601 and 8.900 and therefore such products could be listed and traded on the Exchange.

Listed Company Manual Section 302.00

The Exchange proposes to amend Section 302.00 of the Listed Company Manual to include Active Proxy Portfolio Shares listed pursuant to proposed Rule 8.601 and Managed Portfolio Shares listed pursuant to proposed Rule 8.900 among the securities to which the requirements of Section 302.00 regarding annual shareholders’ meetings do not apply. The proposed change would also align Section 302.00 with NYSE Arca Rule 5.3-E.

2. Statutory Basis

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),²⁸ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and

²⁷ 15 U.S.C. 78f(b).

²⁸ 15 U.S.C. 78f(b)(5).

a national market system and, in general, to protect investors and the public interest. In addition to the reasons enumerated below, the Exchange believes that the proposed changes would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and protect investors and the public interest because the proposed rules are based on rules of the Exchange's affiliated market, NYSE Arca, that have been approved by the Commission. Accordingly, the proposed rule changes promote continuity across affiliated exchanges, permitting series of Active Proxy Portfolio Shares and Managed Portfolio Shares to list and trade on the Exchange by meeting the same listing standards as on the Exchange's affiliated market.

Proposed Rule 8.601

The Exchange believes that proposed Rule 8.601 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.

Proposed Rule 8.601(d) sets forth initial and continued listing criteria applicable to Active Proxy Portfolio Shares. Proposed Rule 8.601(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(d)(1)(B) provides, and the Exchange represents, 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 Actual Portfolio will be made available to all market participants at the same time. Proposed Rule 8.601(d)(1)(C) provides that all Active Proxy Portfolio Shares shall

have a stated investment objective, which shall be adhered to under normal market conditions. Proposed Rule 8.601(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(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(d)(2)(D)(iii) provides that, 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 made available 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, as applicable. 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 Rule 8.601 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 Rule 8.601 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 Actual 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 Actual Portfolio and/or Actual Portfolio or has access to non-public information regarding the Investment Company's Actual Portfolio and/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 and/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 proposed 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 or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in series of Active Proxy Portfolio Share 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 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.²⁹ 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 daily 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

²⁹ See note 7, supra.

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 assets³⁰ 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.

³⁰ 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.

The Exchange believes that Active Proxy Portfolio Shares 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 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.

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, Proxy Portfolio, and Actual Portfolio will be made available to all market participants at the same time. 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 a fund, 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.

Information regarding market price and trading volume of the shares 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 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 CTA high-speed line or from the exchange on which such securities trade. Intraday pricing information for all constituents of the Proxy Portfolio that are exchange-traded, which includes all eligible instruments except cash and cash equivalents, will be available on the exchanges on which they are traded and through subscription services. Intraday pricing information for cash equivalents will be available through subscription services and/or pricing services.

Trading in a series of Active Proxy Portfolio Shares will be halted if the circuit breaker parameters in Rule 7.12 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 proposed Rule 8.601(d)(2)(D), which sets forth circumstances under which shares of a fund will be halted.

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 ETP 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.

Proposed Rule 8.900

The Exchange believes that proposed Rule 8.900 is designed to prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading of Managed Portfolio Shares provide specific initial and continued listing criteria required to be met by such securities. Proposed Rule 8.900(d) sets forth initial and continued listing criteria applicable to Managed Portfolio Shares. Proposed Rule 8.900(d)(1)(A) provides that, for each series of Managed Portfolio Shares, the Exchange will establish a minimum number of Managed Portfolio Shares required to be outstanding at the time of commencement of trading. In addition, proposed Rule 8.900(d)(1)(B) provides that the Exchange will obtain a representation from the Investment Company that issues each series of Managed Portfolio Shares that the NAV per share for the series will be calculated daily and that the NAV will be made available to all market participants at the same time.³¹ Proposed Rule 8.900(d)(2) provides that each series of Managed Portfolio Shares will be listed and traded subject to application of the specified continued listing criteria, as described above. Proposed Rule 8.900(d)(2)(A) provides that the VIIV for Managed Portfolio Shares will be widely disseminated by the Reporting Authority and/or one or more major market data vendors in one second intervals during the Exchange's Core Trading Session, and will be disseminated to all market participants at the same time. Proposed Rule 8.900(d)(2)(B) provides that the Exchange will consider the suspension of trading in, and will

³¹ Proposed Rule 8.900(d)(2)(C)(ii) provides that if the Exchange becomes aware that the NAV with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the NAV is available to all market participants at the same time.

commence delisting proceedings under Rule 5.5(m) for, a series of Managed Portfolio Shares under any of the following circumstances: (a) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Portfolio Shares, there are fewer than 50 beneficial holders of the series of Managed Portfolio Shares; (b) if the Exchange has halted trading in a series of Managed Portfolio Shares because the Verified Intraday Indicative Value is interrupted pursuant to Rule 8.900(d)(2)(C)(ii) and such interruption persists past the trading day in which it occurred or is no longer available; (c) if the Exchange has halted trading in a series of Managed Portfolio Shares because the net asset value with respect to such series of Managed Portfolio Shares is not disseminated to all market participants at the same time, the holdings of such series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act, or such holdings are not made available to all market participants at the same time pursuant to Rule 8.900(d)(2)(C)(ii) and such issue persists past the trading day in which it occurred; (d) if the Exchange has halted trading in a series of Managed Portfolio Shares pursuant to Rule 8.900(d)(2)(C)(i), such issue persists past the trading day in which it occurred; (e) if the Investment Company issuing the Managed Portfolio Shares has failed to file any filings required by the Commission or if the Exchange is 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 the series of Managed Portfolio Shares; (f) if any of the continued listing requirements set forth in Rule 8.900 are not continuously maintained; (g) 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 Managed Portfolio Shares, are not continuously maintained; or (h) 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 5.900(d)(2)(C)(i) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in the series of Managed 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 Managed 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 portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Proposed Rule 8.900(d)(2)(C)(ii) provides that, if the Exchange becomes aware that: (a) the VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (b) the net asset value with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (c) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (d) such holdings are not made available to all market participants at the same time (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares), it will halt trading in such series until such time as the VIIV, the net asset value, or the holdings are available, as required. Proposed Rule 8.900(d)(2)(D) provides that, upon termination of an Investment Company, the Exchange requires that Managed Portfolio Shares issued in connection with such entity be removed from Exchange listing. Proposed Rule 8.900(d)(2)(E) provides that voting rights shall be as set forth

in the applicable Investment Company prospectus and/or SAI.

Proposed Rule 8.900(b)(4) provides that, if the investment adviser to the Investment Company issuing Managed 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 affiliates, as applicable, with respect to access to information concerning the composition of and/or changes to such Investment Company portfolio and/or the Creation Basket. 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 portfolio composition or changes thereto or the Creation Basket must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. Proposed Rule 8.900(b)(5) provides that, any person or entity, including an AP Representative, custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company’s portfolio composition or changes thereto or the Creation Basket, must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. 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 portfolio or Creation Basket.

The Exchange believes that these proposed rules are designed to prevent fraudulent and

manipulative acts and practices related to the listing and trading of Managed Portfolio Shares because they provide meaningful requirements about both the data that will be made publicly available about the shares as well as the information that will only be available to certain parties and the controls on such information. Specifically, the Exchange believes that the requirements related to information protection enumerated under proposed Rule 8.900(b)(5) will act as a strong safeguard against any misuse and improper dissemination of non-public information related to a fund's portfolio composition, the Creation Basket, 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 portfolio or Creation Basket 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 believes that market makers will be able to make efficient and liquid markets priced near the VIIV, as long as market makers have knowledge of a fund's means of achieving its investment objective, even without daily disclosure of a fund's underlying portfolio. The Exchange believes that market makers will employ risk-management techniques to make efficient markets in exchange traded products. This ability should permit market makers to make efficient markets in shares without knowledge of a fund's underlying portfolio.

The Exchange understands that traders use statistical analysis to derive correlations between different sets of instruments to identify opportunities to buy or sell one set of instruments when it is mispriced relative to the others. For Managed Portfolio Shares, market

makers utilizing statistical arbitrage use the knowledge of a fund's means of achieving its investment objective, as described in the applicable fund Registration Statement, to construct a hedging proxy for a fund to manage a market maker's quoting risk in connection with trading fund shares. Market makers will 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. Eventually, at the end of each day, they will evaluate how their proxy performed in comparison to the price of a fund's shares, and use that analysis as well as knowledge of risk metrics, such as volatility and turnover, to enhance their proxy calculation to make it a more efficient hedge.

Market makers have indicated to the Exchange that there will be sufficient data to run a statistical analysis which will lead to spreads being tightened substantially around the VIIV. 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.

As with some other new ETPs, spreads would tend to narrow as market makers gain more confidence in the accuracy of their hedges and their ability to adjust these hedges in real-time relative to the published VIIV and gain an understanding of the applicable market risk metrics such as volatility and turnover, and as natural buyers and sellers enter the market. Other relevant factors cited by market makers were that a fund's investment objectives are clearly disclosed in the applicable prospectus, the existence of quarterly portfolio disclosure and the ability to create shares in creation unit size or redeem in redemption unit size through an AP.

The real-time dissemination of a fund's VIIV together with the right of APs 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 shares' bid/ask price and NAV.

The pricing efficiency with respect to trading a series of Managed 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 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, along with the dissemination of the VIIV in one second intervals, should permit professional investors to engage easily in this type of hedging activity.³³

³² See note 30, *supra*.

³³ With respect to trading in the shares, market participants would manage risk in a variety of ways. It is expected that market participants will be able to determine how to trade shares at levels approximating the VIIV without taking undue risk by gaining experience with how various market factors (e.g., general market movements, sensitivity of the VIIV to intraday movements in interest rates or commodity prices, etc.) affect VIIV, and by finding hedges for their long or short positions in shares using instruments correlated

With respect to trading of the shares, the ability of market participants to buy and sell shares at prices near the VIIV is dependent upon their assessment that the VIIV is a reliable, indicative real-time value for a fund's underlying holdings. Market participants are expected to accept the VIIV as a reliable, indicative real-time value because (1) the VIIV will be calculated and disseminated based on a fund's actual portfolio holdings, (2) the securities in which a fund plans to invest are generally highly liquid and actively traded and therefore generally have accurate real time pricing available, and (3) market participants will have a daily opportunity to evaluate whether the VIIV at or near the close of trading is indeed predictive of the actual NAV.

In a typical index-based ETF, it is standard for APs to know what securities must be delivered in a creation or will be received in a redemption. For Managed Portfolio Shares, however, APs do not need to know the securities comprising the portfolio of a fund since creations and redemptions are handled through the Confidential Account mechanism. In-kind creations and redemptions through a Confidential Account are expected to preserve the integrity of the active investment strategy and reduce the potential for "free riding" or "front-running," while still providing investors with the advantages of the ETF structure.

with such factors. Market participants will likely initially determine the VIIV's correlation to a major large capitalization equity benchmark with active derivative contracts, such as the Russell 1000 Index, and the degree of sensitivity of the VIIV to changes in that benchmark. For example, using hypothetical numbers for illustrative purposes, market participants should be able to determine quickly that price movements in the Russell 1000 Index predict movements in a fund's VIIV 95% of the time (an acceptably high correlation) but that the VIIV generally moves approximately half as much as the Russell 1000 Index with each price movement. This information is sufficient for market participants to construct a reasonable hedge – buy or sell an amount of futures, swaps or ETFs that track the Russell 1000 equal to half the opposite exposure taken with respect to shares. Market participants will also continuously compare the intraday performance of their hedge to a fund's VIIV. If the intraday performance of the hedge is correlated with the VIIV to the expected degree, market participants will feel comfortable they are appropriately hedged and can rely on the VIIV as appropriately indicative of a fund's performance.

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 Investment Company that issues each series of Managed 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. Investors can also obtain a fund's SAI, its Shareholder Reports, its Form N-CSR, filed twice a year, and its Form N-CEN, filed annually. A fund's 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. In addition, a large amount of information will be publicly available regarding a funds and its shares, thereby promoting market transparency. Quotation and last sale information for the shares will be available via the CTA high-speed line. Information regarding the VIIV will be widely disseminated in one second intervals throughout the Core Trading Session by the Reporting Authority and/or one or more major market data vendors. The website for each fund will include a form of the prospectus for the fund that may be downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis. Moreover, prior to the commencement of trading, the Exchange will inform its members in an Information Bulletin of the special characteristics and risks associated with trading the shares.

The Exchange further believes that the proposal is designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Managed Portfolio Shares and to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange would halt trading under certain circumstances under which trading in the shares of a fund may be inadvisable. Specifically, the Exchange may consider all relevant

factors in exercising its discretion to halt trading in a series of Managed 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 Managed 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 portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Additionally, the Exchange would halt trading as soon as practicable where the Exchange becomes aware that: (a) the VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (b) the net asset value with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (c) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (d) such holdings are not made available to all market participants at the same time, (except as otherwise permitted under a currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares). The Exchange would halt trading in such series of Managed Portfolio Shares until such time as the VIIV, the NAV, or the holdings are available, as required.

The Exchange is proposing to retain discretion to halt trading in a series of Managed Portfolio Shares based on market conditions or where the Exchange determines that trading in such series is inadvisable (each a “Discretionary Halt”) and is also proposing the four Availability of Information Halts described above. The Exchange believes that retaining discretion to implement a Discretionary Halt as specified is consistent with the Act. The proposed rule retaining discretion related to halts is designed to ensure the maintenance of a fair

and orderly market and protect investors and the public interest in that it provides the Exchange with the ability to halt when it determines that trading in the shares is inadvisable. This could be based on the Exchange's own analysis of market conditions being detrimental to a fair and orderly market and/or information provided by the Investment Company or its agent. There are certain circumstances related to the trading and dissemination of information related to the underlying holdings of a series of Managed Portfolio Shares, such as the extent to which trading is not occurring in the securities and/or financial instruments composing the portfolio, that the Exchange may not be in a position to know or become aware of as expeditiously as the Investment Company or its agent. There are certain circumstances where the Investment Company or its agent may request that the Exchange halt trading in the applicable series of Managed Portfolio Shares. Upon receipt of information and/or a request from the Investment Company, the Exchange would consider the information and/or circumstances leading to the request as well as other factors both specific to such issue of Managed Portfolio Shares and the broader market in determining whether trading in the series of Managed Portfolio Shares is inadvisable and that halting trading is necessary in order to maintain a fair and orderly market. As such, the Exchange believes that the proposal to provide the Exchange with discretion to implement a Discretionary Halt is consistent with the Act.

The Exchange believes that the proposed Availability of Information Halts to halt trading in shares of a series of Managed Portfolio Shares are consistent with the Act because: (i) the Commission has already determined that the requirement that the VIIV be disseminated every second is appropriate; (ii) the other Availability of Information Halts are generally consistent with and designed to address the same concerns about asymmetry of information that Rule

8.600(d)(2)(D) related to trading halts in Managed Fund Shares³⁴ is intended to address, specifically that the availability of such information is intended to reduce the potential for manipulation and help ensure a fair and orderly market in Managed Portfolio Shares; and (iii) the quarterly disclosure of portfolio holdings is a fundamental component of Managed Portfolio Shares that allows market participants to better understand the strategy of a fund and to monitor how closely trading in a fund is tracking the value of the underlying portfolio and when such information is not being disclosed as required, trading in the shares is inadvisable and it is necessary and appropriate to halt trading.

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.

³⁴ Rule 8.600(d)(2)(D) provides that “If the Portfolio Indicative Value (as defined in Rule 8.600(c)(3)) of a series of Managed Fund Shares is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Portfolio Indicative Value occurs. If the interruption to the dissemination of the Portfolio Indicative Value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. If a series of Managed Fund Shares is trading on the Exchange pursuant to unlisted trading privileges, the Exchange will halt trading in that series as specified in Rule 7.34(a). In addition, if the Exchange becomes aware that the net asset value or the Disclosed Portfolio with respect to a series of Managed Fund Shares is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value or the Disclosed Portfolio is available to all market participants.” These are generally consistent with the proposed Availability of Information Halts, specifically as it relates to whether the NAV or Disclosed Portfolio is not being made available to all market participants at the same time.

Additionally, any equity instruments or futures held by a fund operating under an exemptive order would trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.³⁵ While future exemptive relief applicable to Managed Portfolio Shares may expand the investable universe, the Exchange notes that proposed Rule 8.900(b)(1) would require the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Managed Portfolio Shares and such proposal would describe the investable universe for any such series of Managed Portfolio Shares along with the Exchange’s surveillance procedures applicable to such series. In addition, as noted above, investors will have ready access to information regarding the VIIV and quotation and last sale information for the shares.

Rule 8P Preamble

The Exchange believes that the proposed change to the preamble to Rule 8P would remove impediments to, and perfect the mechanism of, a free and open market and a national market system because it would facilitate the listing and trading of additional types of actively-managed ETPs on the Exchange, thereby enhancing competition among both market participants and listing venues, to the benefit of investors and the marketplace. Because the portfolios of Active Proxy Portfolio Shares and Managed Portfolio Shares are not disclosed on a real-time basis, the Exchange believes that the issues raised by side-by-side trading³⁶ are not implicated,

³⁵ The Exchange notes that cash equivalents may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

³⁶ “Side-by-side trading” refers to the trading of an equity security and its related derivative product at the same physical location, though “not necessarily by the same specialist or specialist firm.” Securities Exchange Act Release No. 46213 (July 16, 2002), 67 FR 48232, 48233 (July 23, 2002) (SR-Amex-2002-21) (“Release No. 46213”) (order approving side-by-side trading and integrated market making of broad index-based ETFs and related options); see also Securities Exchange Act Release No. 45454 (February 15,

and excepting ETPs listed pursuant to proposed Rules 8.601 and 8.900 from the preamble would be consistent with the protection of investors and the public interest.

More specifically, given that the portfolios of series of Active Proxy Portfolio Shares and Managed Portfolio Shares would not be disclosed on a real-time basis and, at most, would be disclosed on a quarterly basis, the Exchange believes that series of Active Proxy Portfolio Shares and Managed Portfolio Shares would not be susceptible to any potential manipulation that could result from such ETPs having a component NMS Stock that is listed on the Exchange or that is based on, or represents an interest in, an underlying index or reference asset that includes an NMS Stock listed on the Exchange. The Exchange also believes that excluding ETPs listed pursuant to proposed Rules 8.601 and 8.900 from the preamble would be consistent with the protection of investors and the public interest because series of Active Proxy Portfolio Shares and Managed Portfolio Shares would require a rule filing with the Commission prior to commencement of Exchange listing or trading, and in order for a rule proposal to be consistent with the Act, it must, among other things, further the objectives of Section 6(b)(5) of the Act³⁷ in that it is designed to prevent fraudulent and manipulative acts and practices.

Listed Company Manual Section 302.00

The Exchange believes that its proposal to amend Listed Company Manual Section 302.00 to include Active Proxy Portfolio Shares listed pursuant to proposed Rule 8.601 and Managed Portfolio Shares listed pursuant to proposed Rule 8.900 among the securities exempted from the annual shareholders' meeting requirement is designed to prevent fraudulent and

2002), 67 FR 8567, 8568 n. 7 (February 25, 2002) (SR-NYSE-2001-43) (order approving approved person of a specialist to act as a specialist or primary market maker with respect to an option on a stock in which the NYSE specialist is registered on the Exchange).

³⁷ 15 U.S.C. 78f(b)(5).

manipulative acts and practices and to remove impediments to and perfect the mechanism of a free and open market and a national market system because Active Proxy Portfolio Shares and Managed Portfolio Shares would be subject to the same requirements currently applicable to other 1940 Act-registered investment company securities (e.g., Investment Company Units, Managed Fund Shares, and Portfolio Depositary Receipts). The proposed change would also make Section 302.00 consistent with NYSE Arca Rule 5.3-E, which sets forth substantially similar requirements with respect to annual meetings.

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 that the proposed rules facilitate the listing and trading of additional types of actively-managed ETPs on the Exchange, thereby enhancing competition among both market participants and listing venues, to the benefit of investors and the marketplace.

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 within such longer period 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-NYSE-2020-77 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2020-77. 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-NYSE-2020-77 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.³⁸

J. Matthew DeLesDernier
Assistant Secretary

³⁸ 17 CFR 200.30-3(a)(12).