

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104251; File No. SR-NYSEARCA-2025-39]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to Adopt New Rule 5.2-E(j)(9) to Permit the Generic Listing and Trading of Class Exchange-Traded Fund Shares

November 24, 2025.

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

On July 15, 2025, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On September 4, 2025, the Exchange filed Amendment No. 1 to the proposed rule change, and on September 5, 2025, the Commission issued notice of filing of Amendment No. 1 to the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 103189 (June 4, 2025), 90 FR 24463.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 103457, 90 FR 34044 (July 18, 2025).

proposed rule change and instituted proceedings pursuant to Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.⁷ On November 19, 2025, the Exchange filed Amendment No. 2, which amended and replaced the proposed rule change, as modified by Amendment No. 1, in its entirety.⁸ The Commission has received no comments regarding the proposed rule change.

The Commission is publishing this notice and order to solicit comments on the proposed rule change, as modified by Amendment No. 2, from interested persons and to grant approval of the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

I. The Exchange's Description of the Proposal, as Modified by Amendment No. 2

The Exchange proposes to (1) adopt a new Rule 5.2-E(j)(9) to permit the generic listing and trading of Class Exchange-Traded Fund ("ETF") Shares, and (2) make certain conforming changes to the Exchange's rules to accommodate the proposed listing of Class ETF Shares. This Amendment No. 2 to SR-NYSEARCA-2025-39 replaces SR-NYSEARCA-2025-39 and Amendment No. 1 thereto as originally filed and supersedes such filings in their entirety.

The proposed rule change is available on the Exchange's website at www.nyse.com and at the principal office of the Exchange.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Securities Exchange Act Release No. 103885, 90 FR 43655 (Sept. 10, 2025).

⁸ Amendment No. 2 to the proposed rule change is available on the Commission's website at: <https://www.sec.gov/comments/sr-nysearca-2025-39/smysearca202539-677567-2074914.pdf>.

it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

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

Consistent with other products (specifically, Investment Company Units listed pursuant to Rule 5.2- E(j)(3), Managed Fund Shares listed pursuant to Rule 8.600-E, and ETF Shares listed pursuant to Rule 5.2-E(j)(8)), Class ETF Shares would be permitted to be listed and traded on the Exchange without prior Commission approval order or notice of effectiveness pursuant to Section 19(b) of the Act.¹⁰

⁹ The Exchange notes that Cboe BZX Exchange, Inc. (“BZX”) and The Nasdaq Stock Market LLC (“Nasdaq”) have filed substantially similar rule filings. See Securities Exchange Act Release Nos. 103188 (June 4, 2025), 90 FR 24457 (June 10, 2025) (SR-CboeBZX-2025-076) & 103072 (May 20, 2025), 90 FR 22373 (May 27, 2025) (SR-NASDAQ-2025-037).

¹⁰ Rule 19b-4(e)(1) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (“SRO”) is not deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO’s trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the SRO has a surveillance program for the product class. As contemplated by proposed Rule 5.2-E(j)(9), the Exchange proposes to establish generic listing standards for Class ETF Shares of the ETF Class (as defined herein) that would be required to operate as an ETF pursuant to the Multi-Class Fund Exemptive Relief (as defined herein) and be in compliance with the conditions and requirements of Rule 6c-11 under the Investment Company Act of 1940 (the “Investment Company Act”), except as noted in the Multi-Class Fund Exemptive Relief. Class ETF Shares listed under proposed Rule 5.2-E(j)(9) would therefore not need a separate proposed rule change pursuant to Rule 19b-4 before it can be listed and traded on the Exchange.

Background

There are numerous applications for exemptive relief for Class ETF Shares currently before the Commission¹¹ requesting exemptive relief similar to that previously granted to other funds.¹² The current proposal would provide for the “generic” listing and/or trading of Class ETF Shares under proposed Rule 5.2-E(j)(9) on the Exchange.

The Commission began granting limited relief for The Vanguard Group, Inc. (“Vanguard”) in 2000 to offer certain index-based open-end management investment companies with Class ETF Shares.¹³ After this relief was granted, there was limited public discourse about Class ETF Shares until 2019, when the prospect of providing blanket exemptive relief to Class ETF Shares was addressed in the Commission’s adoption of Rule 6c-11 under the Investment Company Act (the “ETF Rule”).¹⁴ The ETF Rule permits ETFs that satisfy certain conditions to operate without the expense or delay of obtaining an exemptive order. However, the ETF Rule did not provide blanket exemptive relief to allow for Class ETF Shares as part of the final rule.

¹¹ See DFA Investment Dimensions Group Inc. and Dimensional Investment Group Inc., (amendment filed March 31, 2025); F/m Investments LLC (amendment filed April 10, 2025); Fidelity Hastings Street Trust and Fidelity Management & Research Company (amendment filed April 11, 2025); Morgan Stanley Institutional Fund Trust and Morgan Stanley Investment Management Inc. (amendment filed April 11, 2025); BlackRock Funds (amendment filed April 15, 2025); Guinness Atkinson Funds (amendment filed April 17, 2025); Metropolitan West Funds, TCW ETF Trust, and TCW Funds, Inc. (amendment filed April 22, 2025); and Northern Funds and Northern Trust Investments, Inc. (amendment filed May 2, 2025).

¹² See note 13, *infra*.

¹³ See Vanguard Index Funds, Investment Company Act Release Nos. 24680 (Oct. 6, 2000) (notice) and 24789 (Dec. 12, 2000) (order). The Commission itself, as opposed to the Commission staff acting under delegated authority, considered the original Vanguard application and determined that the relief was appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Investment Company Act. In the process of granting the order, the Commission also considered and denied a hearing request on the original application, as reflected in the final Commission order. See also the Vanguard Group, Inc., Investment Company Act Release Nos. 26282 (Dec. 2, 2003) (notice) and 26317 (Dec. 30, 2003) (order); Vanguard International Equity Index Funds, Investment Company Act Release Nos. 26246 (Nov. 3, 2003) (notice) and 26281 (Dec. 1, 2003) (order); Vanguard Bond Index Funds, Investment Company Act Release Nos. 27750 (Mar. 9, 2007) (notice) and 27773 (April 2, 2007) (order) (collectively referred to as the “Vanguard Orders”).

¹⁴ See Securities Exchange Act Release No. 10695 (September 25, 2019), 84 FR 57162 (October 24, 2019) (the “ETF Rule Adopting Release”).

Instead, the Commission concluded that Class ETF Shares should request relief through the exemptive application process so that the Commission may assess all relevant policy considerations in the context of the facts and circumstances of particular applicants. The Exchange adopted Rule 5.2-E(j)(8)¹⁵ shortly after implementation of the ETF Rule and, because the ETF Rule did not provide blanket relief to the Class ETF Shares listed on the Exchange pursuant to previously granted exemptive relief and there were no exemptive applications before the Commission at that time, the Exchange did not propose to include any language comparable to what is being proposed herein.

As noted, a number of applications for exemptive relief to permit the applicable fund to offer Class ETF Shares (the “Applications”) have been submitted to the Commission starting in early 2023. In general, the Applications state that the ability of a fund to offer Class ETF Shares, i.e., a fund offering both a class of mutual fund shares and a class of shares that are exchange-traded, could be beneficial to the fund and to shareholders of each type of class for various reasons, including more efficient portfolio management, better secondary market trading opportunities, and cost efficiencies, among others.¹⁶ The Commission has granted, by order, specific exemptive relief (“Multi-Class Fund Exemptive Relief”) under the Investment Company Act on November 17, 2025, that permits, subject to certain conditions and requirements, a Multi-

¹⁵ See Securities Exchange Act No. 88625 (April 13, 2020) 85 FR 21479 (April 17, 2020) (SR-NYSEArca-2019-81) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to Adopt NYSE Arca Rule 5.2-E(j)(8) Governing the Listing and Trading of ETF Shares).

¹⁶ See note 11, *supra*.

Class Fund (as defined below) to issue Class ETF Shares (as defined below) and one or more classes of shares that are not exchange traded, among other things.¹⁷

Proposed Rule Change

Proposed Rule 5.2-E(j)(9)

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

Rule 5.2-E(j)(9)(a) would provide that the Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Class ETF Shares that meet the criteria of the proposed rule.¹⁸

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

¹⁷ See Investment Company Act Release No. 35786 (November 17, 2025) (In the Matter of DFA Investment Dimensions Group Inc., Dimensional Investment Group Inc., Dimensional ETF Trust and Dimensional Fund Advisors LP) (File No. 812-15484).

¹⁸ To the extent that Class ETF Shares do not satisfy one or more of the criteria in proposed Rule 5.2-E(j)(9), the Exchange may file a separate proposal under Section 19(b) of the Act in order to list such securities on the Exchange. Any of the statements or representations in that proposal regarding the index composition, the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, and intraday indicative values (as applicable), or the applicability of Exchange listing rules specified in any filing to list such Class ETF Shares shall constitute continued listing requirements for the Class ETF Shares. Further, in the event that Class ETF Shares become listed under proposed Rule 5.2-E(j)(9) and subsequently can no longer satisfy the requirements of proposed Rule 5.2-E(j)(9), such Class ETF Shares may be listed as Investment Company Units pursuant to Rule 5.2-E(j)(3) or Managed Fund Shares under Rule 8.600-E, as applicable, as long as the Class ETF Shares meet all listing requirements applicable under the alternate listing rule. If the Class ETF Shares do change listing standards, the Exchange would have to comply with all requirements of Rule 19b-4(e) with respect to such Class ETF Shares.

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

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

Proposed Rule 5.2-E(j)(9)(c)(2) would provide that the term “ETF Class” means the class of exchange-traded shares of a Multi-Class Fund that (i) operates as an exchange-traded fund pursuant to exemptive relief granted by order under the Investment Company Act (“Multi-Class Fund Exemptive Relief”), and (ii) is in compliance with the requirements of Rules 5.2-E(j)(9)(e)(1)(ii) and 5.2-E(j)(9)(e)(2)(A)(ii) discussed below on an initial and continued listing basis.

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

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

information relating to the issuance, redemption or trading of Class ETF Shares. A Multi-Class Fund may have more than one Reporting Authority, each having different functions.

Proposed Rule 5.2-E(j)(9)(d) titled “Limitation of Exchange Liability” would provide that neither the Exchange, the Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current index or portfolio value; the current value of the portfolio of securities required to be deposited to the Multi-Class Fund in connection with the issuance of Class ETF Shares; the amount of any dividend equivalent payment or cash distribution to holders of Class ETF Shares; net asset value; or other information relating to the purchase, redemption, or trading of Class ETF Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

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

Proposed Rule 5.2-E(j)(9)(e)(1) titled “Initial and Continued Listing” would provide that Class ETF Shares will be listed and traded on the Exchange provided that: (i) the Multi-Class Fund is eligible to operate an ETF Class as an exchange-traded fund pursuant to, and is otherwise in compliance with the terms and conditions of, the Multi-Class Fund Exemptive Relief; (ii) the ETF Class is in compliance with the conditions and requirements of Rule 6c-11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief; and (iii) the ETF Class and the Multi-Class Fund each satisfies the requirements of this Rule, as applicable, on an initial and continued listing basis. Proposed Rule 5.2-E(j)(9)(e)(1)(A), titled “Initial Shares Outstanding.” would provide that the Exchange will establish a minimum number of Class ETF Shares required to be outstanding at the time of commencement of trading on the Exchange.

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

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

- if, following the initial twelve-month period after commencement of trading on the Exchange of Class ETF Shares, there are fewer than 50 beneficial holders of Class ETF Shares (proposed Rule 5.2-E(j)(9)(e)(2)(C)); or
- if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable (proposed Rule 5.2-E(j)(9)(e)(2)(D)).

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

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

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

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

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

Subsection (a)(2) of proposed Commentary .01 would provide that any advisory committee, supervisory board, or similar entity that advises a Reporting Authority (as defined in

the proposed rule) or that makes decisions on the index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.

Subsection (b) of proposed Commentary .01 would provide that with respect to a Multi-Class Fund that is actively managed, if the investment adviser to the Multi-Class Fund issuing Class ETF Shares is affiliated with a broker-dealer, such investment adviser will erect and maintain a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Multi-Class Fund's portfolio. Further, personnel who make decisions on the portfolio composition must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the applicable portfolio. The Reporting Authority that provides information relating to the Multi-Class Fund's portfolio must also implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of such portfolio.

Proposed Conforming Changes

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

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

Second, the Exchange proposes to amend Rule 5.3-E to exempt Class ETF Shares from the requirements of Rule 5.3-E(d)(9) in connection with the acquisition of the stock or assets of

an affiliated registered investment company in a transaction that complies with Rule 17a-8 under the Investment Company Act and does not otherwise require shareholder approval under the Investment Company Act¹⁹ and the rules thereunder or any other Exchange rule.²⁰ In addition, the Exchange proposes to add proposed Rule 5.2-E(j)(9) to the last paragraph of Rule 5.3-E, which defines derivative and special purpose securities for purposes of Rule 5.3-E.

Discussion

Proposed Rule 5.2-E(j)(9) is based in large part on Rule 5.2-E(j)(8) related to the listing and trading of ETF Shares, which are issued under the Investment Company Act and qualify as ETF Shares under Rule 6c-11 under the Investment Company Act. ETF Shares are similar to Class ETF Shares because the ETF Class is required to operate as an ETF pursuant to the Multi-Class Fund Exemptive Relief and be in compliance with the conditions and requirements of Rule 6c-11 under the Investment Company Act (except as noted in the Multi-Class Fund Exemptive Relief).²¹ The proposed Class ETF Shares generic listing rule would apply only to the class of shares that are exchange-traded. Because the ETF Class would be required to comply, among other things, with the conditions and requirements of Rule 6c-11 under the Investment Company Act, similar to ETF Shares under Rule 5.2-E(j)(8), the Exchange believes that using Rule 5.2-E(j)(8) as the basis for proposed Rule 5.2-E(j)(9) is appropriate.

The Exchange believes that the proposal is designed to prevent fraudulent and manipulative acts and practices because the Exchange will perform ongoing surveillance of Class ETF Shares listed on the Exchange in order to ensure (i) the Multi-Class Fund is, and continues

¹⁹ The Exchange also proposes non-substantive, technical changes to delete two extraneous words in this rule.

²⁰ The Exchange notes that these proposed changes would subject Class ETF Shares to the same corporate governance requirements as other open-end management investment companies listed on the Exchange.

²¹ See note 17, supra.

to be, eligible to operate an ETF Class as an exchange-traded fund pursuant to, and is otherwise in compliance with, the terms and conditions of, the Multi-Class Fund Exemptive Relief, (ii) the ETF Class continues to be compliant with the conditions and requirements of Rule 6c-11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief, and (iii) the ETF Class and the Multi-Class Fund each satisfies the requirements of the proposed Rule, as applicable, on an initial and continuing basis. The Exchange believes that the manipulation concerns that such standards are intended to address are otherwise mitigated by a combination of the Exchange's surveillance procedures, the Exchange's ability to halt trading and to suspend trading and commence delisting proceedings under proposed Rule 5.2-E(j)(9)(e)(2). The Exchange will also halt trading in Class ETF Shares under the conditions specified in Rule 7.12-E, "Trading Halts Due to Extraordinary Market Volatility." The Exchange also believes that such concerns are further mitigated by enhancements to the arbitrage mechanism that have come from Rule 6c-11 under the Investment Company Act, specifically the additional flexibility provided through the use of custom baskets for creations and redemptions and the additional information made available to the public through the additional daily website disclosure obligations applicable under Rule 6c-11.²² The Exchange also notes that there are firewall and other information barrier restrictions in place in the proposed rule text.²³ The Exchange believes that the combination of these factors will act to keep Class ETF Shares trading near the value of their underlying holdings and further mitigate concerns around manipulation of Class ETF Shares on the Exchange.

²² The Exchange notes that the Commission came to a similar conclusion in several places in the ETF Rule Adopting Release. See ETF Rule Adopting Release at 15-18; 60-61; 69-70; 78-79; 82-84; and 95-96.

²³ See proposed Rule 5.2-E(j)(9), Commentary .01(a)(1) & (2).

The Exchange will monitor for compliance to ensure that (i) the Multi-Class Fund is, and continues to be, eligible to operate an ETF Class as an exchange-traded fund pursuant to, and is in otherwise in compliance with, the terms and conditions of, the Multi-Class Fund Exemptive Relief, (ii) the ETF Class continues to be compliant with the conditions and requirements of Rule 6c-11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief, and (iii) the ETF Class and the Multi-Class Fund each satisfies the requirements of Rule 5.2-E(j)(9), as applicable, on an initial and continuing basis. Specifically, the Exchange will review the website of Class ETF Shares listed on the Exchange in order to ensure that the requirements of Rule 6c-11 are being met. The Exchange will also employ numerous intraday alerts that will notify Exchange personnel of trading activity throughout the day that is potentially indicative of certain disclosures not being made timely or the presence of other unusual conditions or circumstances that could be detrimental to the maintenance of a fair and orderly market. As a backstop to the surveillances described above, the Exchange also notes that Rule 5.2-E(j)(9) would require an issuer of Class ETF Shares to notify the Exchange of any failure to comply with the requirements of the proposed Rule, the Multi-Class Fund Exemptive Relief, or Rule 6c-11 under the Investment Company Act.

The Exchange may suspend trading in and commence delisting proceedings for Class ETF Shares where such securities are not in compliance with the applicable listing standards or where the Exchange believes that further dealings on the Exchange are inadvisable.²⁴ The

²⁴ Specifically, proposed Rule 5.2-E(j)(9)(e)(1) provides that Class ETF Shares will be listed and traded on the Exchange subject to application of proposed Rule 5.2-E(j)(9)(e)(2). Proposed Rule 5.2-E(j)(9)(e)(2) provides that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 5.5(m) for, Class ETF Shares under any of the following circumstances: (i) if the Exchange becomes aware, with respect to the Class ETF Shares: (1) the Multi-Class Fund is no longer eligible to operate an ETF Class as an exchange-traded fund pursuant to, or is otherwise no longer in compliance with the terms and conditions of, the Multi-Class Fund Exemptive Relief; or (2) the ETF Class

Exchange also notes that proposed Rule 5.2-E(j)(9)(e) requires any issuer to provide the Exchange with prompt notification after it becomes aware that: (i) the Multi-Class Fund is no longer eligible to operate an ETF Class as an exchange-traded fund pursuant to, or otherwise no longer complies with, the terms and conditions of, the Multi-Class Fund Exemptive Relief; (ii) the ETF Class is no longer compliant with the conditions and requirements of Rule 6c-11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief; or (iii) the ETF Class or the Multi-Class Fund no longer satisfies the requirements of proposed Rule 5.2-E(j)(9), as applicable, on an initial and continuing basis.²⁵

Further, the Exchange also represents that its surveillance procedures are adequate to properly monitor the trading of the Class ETF Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which are currently applicable to Investment Company Units, Managed Fund Shares, and ETF Shares, among other product types, to monitor trading in Class ETF Shares on the Exchange. The Exchange or the Financial Industry Regulatory Authority, Inc. (“FINRA”), on behalf of the Exchange, will communicate as needed regarding trading in Class ETF Shares and certain of

is no longer in compliance with the conditions and requirements of Rule 6c-11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief; (ii) if any of the other listing requirements set forth in this Rule are not continuously maintained; (iii) if, following the initial twelve-month period after commencement of trading on the Exchange of Class ETF Shares, there are fewer than 50 beneficial holders of such the Class ETF Shares; or (iv) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. Proposed Rule 5.2-E(j)(9)(h) provides that with respect to the Class ETF Shares, upon termination of the Multi-Class Fund or the ETF Class, as the case may be, the Exchange requires that Class ETF Shares be removed from Exchange listing.

²⁵ The Exchange notes that failure by an issuer to notify the Exchange of non-compliance pursuant to proposed Rule 5.2-E(j)(9)(e) would itself be considered non-compliance with the requirements of Rule 5.2-E(j)(9) and would subject the Class ETF Shares to potential trading halts and the delisting process under Rule 5.5(m).

their applicable underlying components with other markets that are members of the Intermarket Surveillance Group (“ISG”) or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange may obtain information regarding trading in Class ETF Shares and certain of their applicable underlying components from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Additionally, FINRA, on behalf of the Exchange, is able to access trade information for certain fixed income securities that may be held by a Multi-Class Fund for the Class ETF Shares reported to FINRA’s Trade Reporting and Compliance Engine (“TRACE”). FINRA also can access data obtained from the Municipal Securities Rulemaking Board’s (“MSRB”) Electronic Municipal Market Access (“EMMA”) system relating to municipal bond trading activity for surveillance purposes in connection with trading in Class ETF Shares, to the extent that the Multi-Class Fund for the Class ETF Shares holds municipal securities. Finally, the issuer of Class ETF Shares will be required to comply with Rule 10A-3 under the Act for the initial and continued listing of Class ETF Shares, as provided under Rule 5.3-E.²⁶

The Exchange notes that it may consider all relevant factors in exercising its discretion to halt or suspend trading in Class ETF Shares. Trading may be halted if the circuit breaker parameters in Rule 7.12-E have been reached, because of other market conditions, or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which certain information about the Class ETF Shares that is required to be disclosed under Rule 6c-11 under the Investment Company Act is not being made available,

²⁶ The Exchange notes that these proposed changes would subject Class ETF Shares to the same corporate governance requirements as other open-end management investment companies listed on the Exchange.

including specifically where the Exchange becomes aware that the net asset value or the daily portfolio disclosure with respect to Class ETF Shares is not disseminated to all market participants at the same time, it will halt trading in such securities until such time as the net asset value or the daily portfolio disclosure is available to all market participants;²⁷ (2) if an interruption to the dissemination to the value of the index or reference asset on which Class ETF Shares is based persists past the trading day in which it occurred or is no longer calculated or available; (3) trading in the securities comprising the underlying index or portfolio has been halted in the primary market(s); or (4) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

The Exchange deems Class ETF Shares to be equity securities and therefore they would be subject to the full panoply of Exchange rules and procedures that currently govern the trading of equity securities on the Exchange.²⁸

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,²⁹ in general, and furthers the objectives of Section 6(b)(5),³⁰ in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

²⁷ The Exchange will obtain a representation from the issuer of Class ETF Shares that the net asset value per share will be calculated daily and made available to all market participants at the same time, and the requirements pertaining to the Multi-Class Fund Exemptive Relief and Rule 6c-11 under the Investment Company Act in proposed Rule 5.2-E(j)(9) will be satisfied.

²⁸ With respect to trading in Class ETF Shares, the Exchange represents that all ETP Holder obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with the Exchange's rules and federal securities laws, and the Exchange will continue to monitor ETP Holders for compliance with such requirements, which are not changing as a result of the Multi-Class Fund Exemptive Relief order issued under the Investment Company Act.

²⁹ 15 U.S.C. 78f(b).

³⁰ 15 U.S.C. 78f(b)(5).

The Exchange believes that proposed Rule 5.2-E(j)(9) is designed to prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading Class ETF Shares on the Exchange provide specific initial and continued listing criteria required to be met by such securities. Proposed Rule 5.2-E(j)(9)(e) sets forth initial and continued listing criteria applicable to Class ETF Shares, specifically providing that the Exchange may approve Class ETF Shares for listing and/or trading (including pursuant to unlisted trading privileges) on the Exchange pursuant to Rule 19b-4(e) under the Act, provided that (i) the Multi-Class Fund is eligible to operate an ETF Class as an exchange-traded fund pursuant to, and is otherwise in compliance with the terms and conditions of, the Multi-Class Fund Exemptive Relief; (ii) the ETF Class is in compliance with the conditions and requirements of Rule 6c-11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief; and (iii) the ETF Class and the Multi-Class Fund each satisfies the requirements of this Rule, as applicable, on an initial and continued listing basis.³¹ The Exchange will comply with all the requirements of Rule 19b-4(e) to specifically note that such Class ETF Shares are being listed on the Exchange pursuant to the proposed Rule.

Proposed Rule 5.2-E(j)(9)(e) provides that Class ETF Shares of each Multi-Class Fund will be listed and traded on the Exchange subject to application of proposed Rule 5.2-E(j)(9)(e)(2). Proposed Rule 5.2-E(j)(9)(e)(2) provides that the Exchange will consider the

³¹ The Exchange notes that eligibility to operate in reliance on Rule 6c-11 or any applicable exemptive relief under the Investment Company Act does not necessarily mean that an investment company would be listed on the Exchange pursuant to proposed Rule 5.2-E(j)(9). To this point, an investment company that operates in reliance of exemptive relief providing for Class ETF Shares could alternatively be listed as Investment Company Units or Managed Fund Shares pursuant to Rules 5.2-E(j)(3) or 8.600-E, respectively, and would be subject to all requirements under each of those rules. Further to this point, in the event that Class ETF Shares listed on the Exchange preferred to be listed as a series of Investment Company Units or Managed Fund Shares (as applicable), nothing would preclude such security from changing to be listed as Investment Company Units or Managed Fund Shares (as applicable), as long as the security met each of the initial and continued listing obligations under the applicable rules.

suspension of trading in, and will commence delisting proceedings under Rule 5.5(m) of, Class ETF Shares under any of the following circumstances:

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

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

Proposed Rule 5.2-E(j)(9)(h) provides that with respect to the Class ETF Shares, upon termination of the Multi-Class Fund or the ETF Class, as the case may be, the Exchange requires that the Class ETF Shares be removed from Exchange listing. The Exchange also notes that it

will obtain a representation from the issuer of Class ETF Shares stating that the requirements of Rule 6c-11 and the applicable exemptive relief under the Investment Company Act will be continuously satisfied and that the issuer will notify the Exchange of any failure to do so.

The Exchange further believes that proposed Rule 5.2-E(j)(9) is designed to prevent fraudulent and manipulative acts and practices because of the robust surveillances in place on the Exchange as required under proposed Rule 5.2-E(j)(9)(g) along with the similarities of proposed Rule 5.2-E(j)(9) to the rules related to other securities that are already listed and traded on the Exchange and which would qualify as Class ETF Shares. ETF Shares are identical to Class ETF Shares except that Class ETF Shares have received exemptive relief to operate an exchange-traded fund class in addition to classes of shares that are not exchange-traded. As such, the Exchange believes because the ETF Class would be required to comply, among other things, with the conditions and requirements of Rule 6c-11 under the Investment Company Act, similar to ETF Shares under Rule 5.2-E(j)(8), using Rule 5.2-E(j)(8) as the basis for proposed Rule 5.2-E(j)(9) is appropriate.

The Exchange believes that the proposal is consistent with Section 6(b)(1) of the Act³² in that, in addition to being designed to prevent fraudulent and manipulative acts and practices, the Exchange has the capacity to enforce proposed Rule 5.2-E(j)(9) by performing ongoing surveillance of Class ETF Shares listed on the Exchange in order to ensure that (i) the Multi-Class Fund is, and continues to be, eligible to operate an ETF Class as an exchange-traded fund pursuant to, and is otherwise in compliance with the terms and conditions of, the Multi-Class Fund Exemptive Relief, (ii) the ETF Class continues to be compliant with the conditions and requirements of Rule 6c-11 under the Investment Company Act, except as noted in such Multi-

³² 15 U.S.C. 78f(b)(1).

Class Fund Exemptive Relief, and (iii) the ETF Class and the Multi-Class Fund each satisfies the requirements of proposed Rule 5.2-E(j)(9), as applicable, on an initial and continuing basis. The Exchange believes that the manipulation concerns that such standards are intended to address are otherwise mitigated by a combination of the Exchange’s surveillance procedures, and the Exchange’s ability to halt trading and to suspend trading and commence delisting proceedings under proposed Rule 5.2-E(j)(9)(e)(2). The Exchange will also halt trading in Class ETF Shares under the conditions specified in Rule 7.12-E, “Trading Halts Due to Extraordinary Market Volatility.” The Exchange also believes that such concerns are further mitigated by enhancements to the arbitrage mechanism that have come from compliance with Rule 6c-11, specifically the additional flexibility provided through the use of custom baskets for creations and redemptions and the additional information made available to the public through the additional daily website disclosure obligations applicable under Rule 6c-11 under the Investment Company Act.³³ The Exchange believes that the combination of these factors will act to keep Class ETF Shares trading near the value of their underlying holdings and further mitigate concerns around manipulation of Class ETF Shares on the Exchange.

The Exchange will monitor for compliance with Rule 6c-11 and any applicable exemptive relief in order to ensure that the continued listing standards are being met. Specifically, the Exchange plans to review the website of Class ETF Shares in order to ensure that the requirements of Rule 6c-11 are being met. The Exchange will also employ numerous intraday alerts that will notify Exchange personnel of trading activity throughout the day that is potentially indicative of certain disclosures not being made accurately or the presence of other

³³ The Exchange notes that the Commission came to a similar conclusion in several places in the ETF Rule Adopting Release. See ETF Rule Adopting Release at 15-18; 60-61; 69-70; 78-79; 82-84; and 95-96.

unusual conditions or circumstances that could be detrimental to the maintenance of a fair and orderly market. As a backstop to the surveillances described above, the Exchange also notes that Rule 5.2-E(j)(9) requires an issuer of Class ETF Shares to promptly notify the Exchange of any failure to comply with Rule 6c-11 or the requirements of the Multi-Class Fund Exemptive Relief under the Investment Company Act.

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

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

the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange may obtain information regarding trading in Class ETF Shares and certain of their applicable underlying components from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

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

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

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

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

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

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposal, by permitting the listing and trading of Class ETF Shares under exemptive relief from the Investment Company Act and the rules and regulations thereunder, would introduce additional competition among various ETF products to the benefit of investors.

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

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

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the Act and the rules and regulations thereunder applicable

to a national securities exchange.³⁴ In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Act,³⁵ which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. The Commission also finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 11A(a)(1)(C)(iii) of the Act, which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.³⁶ In addition, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(1) of the Act,³⁷ which requires, among other things, that the Exchange is so organized and has the capacity to be able to enforce compliance by its members and persons associated with its members with the rules of the Exchange.

The Exchange proposes to adopt new NYSE Arca Rule 5.2-E(j)(9) to permit the generic listing and trading, or trading pursuant to unlisted trading privileges, of Class ETF Shares in connection with the Multi-Class Fund Exemptive Relief granted by order under the Investment Company Act.³⁸ Under the proposal and pursuant to the Multi-Class Fund Exemptive Relief, a Multi-Class Fund is permitted to issue a class of shares that are exchange-traded (i.e., ETF Class)

³⁴ In approving this proposed rule change, as modified by Amendment No. 2, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³⁵ 15 U.S.C. 78f(b)(5).

³⁶ See 15 U.S.C. 78k-1(a)(1)(C)(iii).

³⁷ 15 U.S.C. 78f(b)(1).

³⁸ See supra note 17 and accompanying text.

and one or more classes of shares that are not exchange-traded. In accordance with the Multi-Class Fund Exemptive Relief, the ETF Class operates as an ETF in compliance with the conditions and requirements of Rule 6c-11 under the Investment Company Act, except as noted in the Multi-Class Fund Exemptive Relief. The Exchange also proposes conforming changes to the Exchange's definitions, corporate governance requirements under NYSE Arca Rule 5.3-E, and other provisions to accommodate the proposed listing of Class ETF Shares.

A. Consistency with Section 6(b)(5) of the Act

(1) Proposed NYSE Arca Rule 5.2-E(j)(9)

Proposed NYSE Arca Rule 5.2-E(j)(9) is reasonably designed to help prevent fraudulent and manipulative acts and practices. Proposed NYSE Arca Rule 5.2-E(j)(9) is based on NYSE Arca Rule 5.2-E(j)(8), which governs the generic listing and trading of ETF Shares on the Exchange.³⁹ Under current NYSE Arca Rule 5.2-E(j)(8), ETF Shares, which must be eligible to operate in reliance on Rule 6c-11 under the Investment Company Act and must satisfy the requirements of Rule 6c-11 under the Investment Company Act on an initial and continued listing basis, are similar to Class ETF Shares because, under the proposal, the ETF Class also is required to operate as an ETF and be in compliance with the conditions and requirements of Rule

³⁹ See NYSE Arca Rule 5.2-E(j)(8). See also *supra* note 15 and accompanying text; See Securities Exchange Act No. 88625 (April 13, 2020) 85 FR 21479 (April 17, 2020) (SR-NYSEArca-2019-81) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to Adopt NYSE Arca Rule 5.2-E(j)(8) Governing the Listing and Trading of ETF Shares) ("ETF Shares Approval Order").

6c-11 under the Investment Company Act (except as noted in the Multi-Class Fund Exemptive Relief).⁴⁰

As stated in the ETF Shares Approval Order, a central qualification for listing under the proposed rule is ongoing compliance with Rule 6c-11 under the Investment Company Act, which requires, among other things, ETFs to prominently disclose the portfolio holdings that will form the basis for each calculation of net asset value per share.⁴¹ Because initial and ongoing compliance with Rule 6c-11 of the Investment Company Act is a condition for listing and trading Class ETF Shares on the Exchange,⁴² proposed NYSE Arca Rule 5.2-E(j)(9) would permit the Exchange to list and trade shares of an investment company with a fully transparent portfolio,⁴³ and as the Commission previously stated for ETF Shares,⁴⁴ portfolio transparency should equally help prevent manipulation of the price of Class ETF Shares.⁴⁵ Additionally, proposed NYSE

⁴⁰ The Exchange represents that the proposed Class ETF Shares generic listing rules apply only to the class of shares (ETF Class) that are exchange-traded.

⁴¹ See ETF Shares Approval Order, supra note 39, 85 FR at 21487. See also ETF Rule Adopting Release, supra note 14, 84 FR at 57180-81.

⁴² See proposed NYSE Arca Rule 5.2-E(j)(9)(e)(1) (“Class ETF Shares will be listed and traded on the Exchange provided that . . . the ETF Class is in compliance with the conditions and requirements of Rule 6c-11 under the Investment Company Act of 1940, except as noted in such Multi-Class Fund Exemptive Relief”) and NYSE Arca Rule 5.2-E(j)(9)(e)(2) (“The Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 5.5-E(m) of, Class ETF Shares . . . if the Exchange becomes aware that with respect to the Class ETF Shares . . . the ETF Class is no longer in compliance with the conditions and requirements of Rule 6c-11 under the Investment Company Act of 1940, except as noted in such Multi-Class Fund Exemptive Relief”).

⁴³ The Commission stated that, with respect to ETF portfolio transparency, the disclosures are designed to promote an effective arbitrage mechanism and inform investors about the risks of deviation between market price and net asset value when deciding whether to invest in ETFs generally or in a particular ETF. See ETF Rule Adopting Release, supra note 14, 84 FR at 57166.

⁴⁴ See ETF Shares Approval Order, supra note 43, 85 FR at 21487 (concluding that because initial and ongoing compliance with Rule 6c-11 of the Investment Company Act is a condition for listing and trading on the Exchange, the proposed rule would permit the listing and trading of shares of an investment company with a fully transparent portfolio, and the Commission believes that portfolio transparency should help prevent manipulation of the price of ETF Shares).

⁴⁵ See ETF Rule Adopting Release, supra note 14, 84 FR at 57169 (concluding that portfolio transparency combined with existing requirements should be sufficient to protect against certain abuses).

Arca Rule 5.2-E(j)(9) includes requirements relating to fire walls and procedures to prevent the use and dissemination of material, non-public information regarding the applicable Multi-Class Fund index and portfolio,⁴⁶ all such requirements of which are substantively identical to those applicable to ETF Shares under NYSE Arca Rule 5.2-E(j)(8) and are designed to prevent fraudulent and manipulative acts and practices.⁴⁷ Certain of these requirements relating to such fire walls and procedures apply in addition to what is already required under the Act and the Investment Company Act and respective rules and regulations thereunder, and such requirements collectively provide additional protections against the potential misuse of material, non-public information.⁴⁸ The Commission concludes that the proposed requirements relating to such fire

⁴⁶ For example, proposed Commentary .01(a)(1) to NYSE Arca Rule 5.2-E(j)(9) provides that, with respect to Class ETF Shares that are based on an index, if the underlying index is maintained by a broker-dealer or fund adviser, the broker-dealer or fund adviser will erect and maintain a “fire wall” around the personnel who have access to information concerning changes and adjustments to the index, and the index will be calculated by a third party who is not a broker-dealer or fund adviser. Proposed Commentary .01(b) to NYSE Arca Rule 5.2-E(j)(9) further states that, with respect to a Multi-Class Fund that is actively managed, if the investment adviser to the Multi-Class Fund issuing Class ETF Shares is affiliated with a broker-dealer, such investment adviser will erect and maintain a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Multi-Class Fund’s portfolio. Proposed Commentary .01(a)(2) to NYSE Arca Rule 5.2-E(j)(9) requires that any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index composition, methodology, and related matters must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the applicable index. For actively managed Multi-Class Funds, personnel who make decisions on the portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the applicable portfolio. See generally Commentary .01(b) to NYSE Arca Rule 5.2-E(j)(9). Compare proposed NYSE Arca Rule 5.2-E(j)(9)(e) (encompassing the initial and continued listing requirements for Class ETF Shares) with NYSE Arca Rule 5.2-E(j)(8)(e) (encompassing the initial and continued listing requirements for ETF Shares).

⁴⁷ In adopting Rule 6c-11 under the Investment Company Act, the Commission stated that the safeguards in the existing regulatory regime adequately address “special concerns that self-indexed ETFs present, including the potential ability of an affiliated index provider to manipulate an underlying index to the benefit or detriment of a self-indexed ETF.” See ETF Rule Adopting Release, supra note 14, 84 FR at 57168. See also ETF Shares Approval Order, supra note 39, 85 FR at 21487 (concluding that the requirements of NYSE Arca Rule 5.2-E(j)(8), which includes provisions relating to fire walls and procedures to prevent the use and dissemination of material, non-public information regarding the applicable ETF index and portfolio for ETF Shares, are designed to prevent fraudulent and manipulative acts and practices).

⁴⁸ See ETF Shares Approval Order, supra note 39, 85 FR at 21487 (stating that the requirements for ETF Shares relating to fire walls and procedures, which are substantively identical to NYSE Arca’s rules

walls and procedures, combined with Multi-Class Fund portfolio transparency with respect to the ETF Class and the existing requirements under the Act and Investment Company Act, should help to protect against fraudulent and manipulative acts and practices under Section 6(b)(5) of the Act.⁴⁹

Proposed NYSE Arca Rule 5.2-E(j)(9)(g) requires that the Exchange implement and maintain written surveillance procedures for Class ETF Shares. The Exchange represents that it will utilize its existing surveillance procedures applicable to derivative products, which are currently applicable to ETF Shares, among other product types, to monitor trading in Class ETF Shares, and further represents that its surveillance procedures are adequate to (a) properly monitor the trading of the Class ETF Shares during all trading sessions and (b) deter and detect violations of Exchange rules and the applicable federal securities laws. The Exchange also represents that the Exchange, or FINRA on behalf of the Exchange, will communicate as needed regarding trading in Class ETF Shares and certain of their applicable underlying components with other markets that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange also may obtain information regarding trading in Class ETF Shares and certain of their applicable underlying components from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Additionally, FINRA, on behalf of the

governing the listing and trading of index-based and actively managed ETFs, apply in addition to what is already required under the Act and the Investment Company Act and respective rules and regulations thereunder, and that such requirements collectively provide additional protections against the potential misuse of material, non-public information).

⁴⁹ See *id.* (“Therefore, the Commission concludes that the proposed requirements relating to such fire walls and procedures, combined with ETF portfolio transparency and the existing requirements under the Act and [Investment Company Act], should help to protect against fraudulent and manipulative acts and practices under Section 6(b)(5) of the Act.”).

Exchange, is able to access, as needed, trade information for certain fixed income securities that may be held by the Multi-Class Fund for the Class ETF Shares reported to TRACE. FINRA also can access data obtained from the EMMA system relating to municipal bond trading activity for surveillance purposes in connection with trading in Class ETF Shares, to the extent that the Multi-Class Fund for the Class ETF Shares holds municipal securities. The Exchange states that NYSE Arca Rule 5.2-E(j)(9)(e) requires any issuer to provide the Exchange with prompt notification after it becomes aware that (i) the Multi-Class Fund is no longer eligible to operate an ETF Class as an exchange-traded fund pursuant to, or otherwise no longer complies with, the terms and conditions of, the Multi-Class Fund Exemptive Relief, (ii) the ETF Class is no longer compliant with the conditions and requirements of Rule 6c-11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief, or (iii) the ETF Class or the Multi-Class Fund no longer satisfies the requirements of NYSE Arca Rule 5.2-E(j)(9), as applicable, on an initial and continuing basis.⁵⁰ The Exchange further represents that it will obtain a representation from the issuer of Class ETF Shares stating that the requirements of Rule 6c-11 and the applicable exemptive relief under the Investment Company Act will be continuously satisfied and that the issuer will notify the Exchange of any failure to do so.

Consistent with the requirement of Section 6(b)(5) of the Act⁵¹ that the Exchange's rules be designed to remove impediments to and perfect the mechanism of a free and open market, the Exchange's rules regarding trading halts will help to ensure the maintenance of fair and orderly markets for Class ETF Shares. Specifically, the Exchange may consider all relevant factors in

⁵⁰ See supra note 25 and accompanying text. See also NYSE Arca Rule 5.2-E(b) (requiring, among other things, that "[a]n issuer with securities listed under Rule 5.2-E . . . must provide the Exchange with prompt notification after the issuer becomes aware of any noncompliance by the issuer with the applicable continued listing requirements . . .").

⁵¹ 15 U.S.C. 78f(b)(5).

exercising its discretion to halt or suspend trading in Class ETF Shares. The Exchange states that trading in Class ETF Shares may be halted if the circuit breaker parameters in NYSE Arca Rule 7.12-E have been reached, because of other market conditions, or for reasons that, in the view of the Exchange, make trading in the Class ETF Shares inadvisable. According to the Exchange, the reasons to halt trading may include: (1) the extent to which certain information about the Class ETF Shares that is required to be disclosed pursuant to Rule 6c-11 under the Investment Company Act is not being made available;⁵² (2) if an interruption to the dissemination to the value of the index or reference asset on which the Class ETF Shares is based persists past the trading day in which it occurred or is no longer calculated or available; (3) trading in the securities comprising the underlying index or portfolio has been halted in the primary market(s); or (4) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. As the Exchange further represents in the proposal, if the Exchange becomes aware that the net asset value or the daily portfolio disclosure with respect to the Class ETF Shares is not disseminated to all market participants at the same time, it will halt trading in the Class ETF Shares until such time as the net asset value or the daily portfolio disclosure is available to all market participants.⁵³ The Exchange represents that it may suspend trading in and commence delisting proceedings for Class ETF Shares where such securities are not in compliance with the applicable listing standards or where the Exchange believes that further dealings on the Exchange are inadvisable.⁵⁴

⁵² The Exchange will obtain a representation from the issuer of Class ETF Shares that the net asset value per share will be calculated daily and made available to all market participants at the same time, and the requirements pertaining to the Multi-Class Fund Exemptive Relief and Rule 6c-11 under the Investment Company Act in proposed NYSE Arca Rule 5.2-E(j)(9) will be satisfied. See supra note 27 and accompanying text.

⁵³ See id.

⁵⁴ See supra note 24 and accompanying text.

The Commission also finds that, consistent with Section 11A(a)(1)(C)(iii) of the Act,⁵⁵ the proposed rule change, as modified by Amendment No. 2, is reasonably designed to promote fair disclosure of information that may be necessary to price the Class ETF Shares appropriately, to prevent trading when a reasonable degree of transparency cannot be assured, to safeguard material non-public information relating to the Class ETF Shares, and to ensure fair and orderly markets for Class ETF Shares.

(2) Other Related Proposed Rule Changes

The Exchange also proposes changes to accommodate Class ETF Shares in other Exchange rules. First, the Exchange proposes to add Class ETF Shares to the definition of “Derivative Securities Product and UTP Derivative Securities Product” in NYSE Arca Rule 1.1. Second, the Exchange proposes to amend NYSE Arca Rule 5.3-E to exempt Class ETF Shares from the requirements of Rule 5.3-E(d)(9) in connection with the acquisition of the stock or assets of an affiliated registered investment company in a transaction that complies with Rule 17a-8 under the Investment Company Act and does not otherwise require shareholder approval under the Investment Company Act⁵⁶ and the rules thereunder or any other Exchange rule. In addition, the Exchange proposes to add proposed Rule 5.2-E(j)(9) to the last paragraph of Rule 5.3-E, which defines derivative and special purpose securities for purposes of Rule 5.3-E.⁵⁷ These proposed changes incorporate proposed NYSE Arca Rule 5.2-E(j)(9) into the existing

⁵⁵ See supra note 36 and accompanying text.

⁵⁶ The Exchange also proposes non-substantive, technical changes to delete two extraneous words in this rule. See supra note 19.

⁵⁷ The Exchange states that these proposed changes would subject Class ETF Shares to the same corporate governance requirements as other open-end management investment companies listed on the Exchange. See supra note 20 and accompanying text.

framework of the Exchange's rules, and therefore the Commission finds that such changes are consistent with Section 6(b)(5) of the Act.

B. Consistency with Section 6(b)(1) of the Act

The Commission also finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(1) of the Act,⁵⁸ which requires, among other things, that the Exchange is so organized and has the capacity to be able to enforce compliance by its members and persons associated with its members with the rules of the Exchange. The Exchange represents that, consistent with Section 6(b)(1) of the Act,⁵⁹ it has the capacity to enforce proposed NYSE Arca Rule 5.2-E(j)(9) and that it will perform ongoing surveillance of Class ETF Shares listed on the Exchange to ensure that: (1) the Multi-Class Fund is and continues to be eligible to operate an ETF Class as an ETF pursuant to, and is otherwise in compliance with the terms and conditions of, the Multi-Class Fund Exemptive Relief; (2) the ETF Class continues to be compliant with the conditions and requirements of Rule 6c-11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief; and (3) the ETF Class and the Multi-Class Fund each satisfies the requirements of proposed NYSE Arca Rule 5.2-E(j)(9), as applicable, on an initial and continued listing basis. In addition, the Exchange represents that it will review the website of the Class ETF Shares listed on the Exchange to ensure that the requirements of Rule 6c-11 under the Investment Company Act are being met and will obtain a representation from the issuer of the Class ETF Shares that the requirements of Rule 6c-11 and the applicable exemptive relief under the Investment Company Act will be continuously satisfied, and that the issuer will notify the Exchange of any failure to do so. The

⁵⁸ 15 U.S.C. 78f(b)(1).

⁵⁹ Id.

Exchange also represents that it will comply with all the requirements of Rule 19b-4(e) to specifically note that such Class ETF Shares are being listed on the Exchange pursuant to NYSE Arca Rule 5.2-E(j)(9).⁶⁰

The Exchange states that it will employ numerous intraday alerts to notify Exchange personnel of trading activity throughout the day that is potentially indicative of certain disclosures not being made accurately or the presence of other unusual conditions or circumstances that could be detrimental to the maintenance of a fair and orderly market. The Exchange also states that proposed NYSE Arca Rule 5.2-E(j)(9) requires any issuer to provide the Exchange with prompt notification after it becomes aware of any non-compliance with proposed NYSE Arca Rule 5.2-E(j)(9),⁶¹ which would include any failure of the issuer to comply with Rule 6c-11 under the Investment Company Act or with the terms and conditions of the Multi-Class Fund Exemptive Relief.⁶² Further, proposed NYSE Arca Rule 5.2-E(j)(9)(e)(2)(C) requires that the Exchange consider the suspension of trading in, and commence delisting proceedings for, Class ETF Shares if, following the initial 12-month period after commencement of trading on the Exchange, there are fewer than 50 beneficial holders of the Class ETF Shares.⁶³ Finally, the Exchange deems Class ETF Shares to be equity securities and represents, therefore,

⁶⁰ Rule 19b-4(e) requires an SRO seeking to rely on Rule 19b-4(e) to post on its publicly available internet website within five business days after commencement of trading a new derivative securities product the following information relating to the new derivative securities product, using the most recent versions of the XML schema and the associated PDF renderer as published on the Commission's website: (A) type of issuer; (B) class; (C) name of underlying instrument; (D) if the underlying instrument is an index, whether it is broad-based or narrow-based; (E) ticker symbol(s); (F) market(s) upon which securities composing the underlying instrument trade; (G) settlement methodology; and (H) position limits (if applicable). See 17 CFR 240.19b-4(e)(2)(ii). See also supra notes 10 and 18 and respective accompanying text.

⁶¹ See NYSE Arca Rule 5.2-E(b) (requiring, among other things, that “[a]n issuer with securities listed under Rule 5.2-E . . . must provide the Exchange with prompt notification after the issuer becomes aware of any noncompliance by the issuer with the applicable continued listing requirements . . .”).

⁶² See supra note 50 and accompanying text.

⁶³ See proposed NYSE Arca Rule 5.2-E(j)(9)(e)(2)(C).

that such Class ETF Shares would be subject to the full panoply of Exchange rules and procedures that currently govern the trading of equity securities on the Exchange.⁶⁴ The Exchange states that Class ETF Shares will be subject to rules governing Exchange member disclosure obligations in connection with equities trading, and that Rule 6c-11 under the Investment Company Act does not change the applicability of these Exchange rules with respect to these securities.⁶⁵

This approval order is based on all of the Exchange's representations and descriptions in the proposed rule change, including those set forth above and in Amendment No. 2, which the Commission has carefully evaluated as discussed above. For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Sections 6(b)(1) and 6(b)(5) of the Act⁶⁶ and the rules and regulations thereunder applicable to a national securities exchange.

IV. Solicitation of Comments on Amendment No. 2 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether the proposed rule change, as modified by Amendment No. 2, is consistent with the Act. Comments may be submitted by any of the following methods:

⁶⁴ See supra note 28 and accompanying text.

⁶⁵ With respect to trading in Class ETF Shares, the Exchange represents that all ETP Holder obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with the Exchange's rules and federal securities laws, and the Exchange will continue to monitor ETP Holders for compliance with such requirements, which are not changing as a result of the Multi-Class Fund Exemptive Relief order issued under the Investment Company Act. See supra note 28 and accompanying text.

⁶⁶ 15 U.S.C. 78f(b)(1) and 15 U.S.C. 78f(b)(5), respectively.

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>);
or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2025-39 on the subject line.

Paper Comments:

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

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

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

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

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 2, prior to the 30th day after the date of publication of Amendment No. 2 in the Federal Register. Amendment No. 2 reflects the Commission's grant of the Multi-Class Fund

Exemptive Relief and provides additional clarity with respect to the application of the Exchange's proposed listing standards and the requirements of the Multi-Class Fund Exemptive Relief. Amendment No. 2 also makes certain additional corrections that are minor and technical in nature. In addition, the proposal, as modified by Amendment No. 1, has been subject to public comment and no comments have been received.

The Commission finds that Amendment No. 2 to the proposed rule change raises no novel regulatory issues that have not previously been subject to comment, and is reasonably designed, among other things, to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. The Commission also finds that Amendment No. 2 to the proposed rule change is consistent with Section 11A(a)(1)(C)(iii) of the Act.⁶⁷ Accordingly, pursuant to Section 19(b)(2) of the Act,⁶⁸ the Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

⁶⁷ See supra note 36 and accompanying text.

⁶⁸ 15 U.S.C. 78s(b)(2).

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁶⁹ that the proposed rule change (SR-NYSEARCA-2025-39), as modified by Amendment No. 2, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷⁰

Sherry R. Haywood,

Assistant Secretary.

⁶⁹ Id.

⁷⁰ 17 CFR 200.30-3(a)(12).