

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88535; File No. SR-NYSEArca-2019-92)

April 1, 2020

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Four Series of Active Proxy Portfolio Shares Issued by T. Rowe Price Exchange-Traded Funds, Inc. Under Proposed NYSE Arca Rule 8.601-E

I. Introduction

On December 23, 2019, 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 list and trade the following Active Proxy Portfolio Shares under proposed NYSE Arca Rule 8.601-E: T. Rowe Price Blue Chip Growth ETF, T. Rowe Price Dividend Growth ETF, T. Rowe Price Growth Stock ETF, and T. Rowe Price Equity Income ETF (“Funds”).³ The proposed rule change was published for comment in the Federal Register on January 3, 2020.⁴ On February 13,

¹ 15 U.S.C.78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange originally proposed to adopt NYSE Arca Rule 8.601-E to permit the Exchange to list and trade Managed Portfolio Securities, and to list and trade shares of the Funds under proposed Exchange Rule 8.601-E (Managed Portfolio Securities). In Amendment No. 1, the Exchange removed the proposal to adopt proposed NYSE Arca Rule 8.601-E (Managed Portfolio Securities) and revised the proposal to seek to list and trade shares of the Funds under proposed NYSE Arca Rule 8.601-E (Active Proxy Portfolio Shares). See Amendment No. 1, infra note 7. See also Amendment 2 to SR-NYSEArca-2019-95 (proposing to adopt NYSE Arca Rule 8.601-E to list and trade Active Proxy Portfolio Shares, available on the Commission’s website at <https://www.sec.gov/comments/sr-nysearca-2019-95/srnysearca201995.htm>).

⁴ See Securities Exchange Act Release No. 87865 (Dec. 30, 2019), 85 FR 380 (“Notice”).

2020, pursuant to Section 19(b)(2) of the Exchange Act,⁵ 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rule change.⁶ On March 31, 2020, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.⁷ The Commission has received no comments on the proposed rule change.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. 1, from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act⁸ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

II. The Exchange's Description of the Proposed Rule Change, as Modified by Amendment No. 1

The Exchange proposes to list and trade shares of the following under proposed NYSE Arca Rule 8.601-E (Active Proxy Portfolio Shares): T. Rowe Price Blue Chip Growth ETF; T. Rowe Price Dividend Growth ETF; T. Rowe Price Growth Stock ETF; and T. Rowe Price Equity Income ETF. This Amendment No. 1 to SR-NYSEArca-2019-92 replaces SR-NYSEArca-2019-92 as originally filed and supersedes such filing in its entirety.

The proposed change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

⁵ 15 U.S.C. 78s(b)(2).

⁶ See Securities Exchange Act Release No. 88197, 85 FR 9887 (Feb. 20, 2020). The Commission designated April 2, 2020, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁷ Amendment No. 1 is available on the Commission's website at <https://www.sec.gov/>.

⁸ 15 U.S.C. 78s(b)(2)(B).

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange has proposed to add new NYSE Arca Rule 8.601-E for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges (“UTP”), of Active Proxy Portfolio Shares, which are securities issued by an actively managed open-end investment management company.⁹ Proposed Commentary .02 to Rule 8.601-E would require the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Active Proxy Portfolio Shares on the Exchange. Therefore, the Exchange is

⁹ See Amendment 2 to SR-NYSEArca-2019-95, filed on March 31, 2020. Proposed Rule 8.601-E(c)(1) provides that the term “Active Proxy Portfolio Share” means a security that (a) is issued by a registered investment company (“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 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 a transfer of 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.

submitting this proposal in order to list and trade shares (“Shares”) of the T. Rowe Price Blue Chip Growth ETF; T. Rowe Price Dividend Growth ETF; T. Rowe Price Growth Stock ETF; and T. Rowe Price Equity Income ETF (each a “Fund” and, collectively, the “Funds”) under proposed Rule 8.601-E.

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 listed and traded under NYSE Arca Rule 8.600-E,¹⁰ Active Proxy Portfolio Shares differ from Managed Fund Shares in the following important respects. First, in contrast to Managed Fund Shares, for which a fund’s “Disclosed Portfolio” is required to be disseminated at least once daily,¹¹ the full portfolio holdings for a series of Active

¹⁰ The Commission has previously approved listing and trading on the Exchange of a number of issues of Managed Fund Shares under Rule 8.600-E. A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (“1940 Act”) organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Rule 5.2-E(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof. See, e.g., Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR-NYSEArca-2008-31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 76871 (January 11, 2016), 81 FR 2261 (January 15, 2016) (SR-NYSEArca-2015-114) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Shares of the Market Vectors Dynamic Put Write ETF under NYSE Arca Equities Rule 8.600); 86636 (August 12, 2019), 84 FR 42030 (August 16, 2019) (SR-NYSEArca-2018-98) (Notice of Filing of Amendment No. 4 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 4, to List and Trade Shares of the iShares Commodity Multi-Strategy ETF under NYSE Arca Rule 8.600-E).

¹¹ NYSE Arca Rule 8.600-E(c)(2) defines the term “Disclosed Portfolio” as the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company’s calculation of NAV at the end of the

Proxy Portfolio Shares will not be made available on a daily basis. Rather, a fund’s “Actual Portfolio”¹² will be publicly disclosed within at least 60 days following the end of every fiscal quarter in accordance and in compliance with the portfolio holdings disclosure requirements applicable to other registered open-end funds, including traditional mutual funds.¹³ Second, in connection with the creation and redemption of Active Proxy Portfolio Shares, such creation or redemption may be in exchange for a fund’s Proxy Portfolio and/or cash with a value equal to the next determined NAV. The Proxy Portfolio is designed to serve as a pricing signal for low-risk arbitrage trades in shares of Active Proxy Portfolio Shares generally.

Market makers have indicated to the Exchange that there will be sufficient data to engage in arbitrage trades in Active Proxy Portfolio Shares with accuracy and minimal risk. In addition, market makers have indicated that they are incented to engage in arbitrage trades when the risk

Business Day. NYSE Arca Rule 8.600-E(d)(2)(B)(i) requires that the Disclosed Portfolio be disseminated at least once daily and be made available to all market participants at the same time.

¹² Proposed Rule 8.601-E (c)(2) provides that term “Actual Portfolio” means the identities and quantities of the securities and other assets held by the Investment Company that shall form the basis for the Investment Company’s calculation of NAV at the end of the business day.

¹³ 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, and is required to file its complete portfolio schedules each month on Form N-PORT under the 1940 Act, within 60 days of the end of each month. Information reported on Form N-PORT for the third month of the Fund’s fiscal quarter will be made publicly available 60 days after the end of the Fund’s fiscal quarter. Form N-PORT requires reporting of a fund’s complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund’s Statement of Additional Information, its Shareholder Reports, its Form N-CSR, filed twice a year, and its Form N-CEN, filed annually. A fund’s statement of additional information (“SAI”) and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed on-screen or downloaded from the Commission’s website at www.sec.gov.

of the trade is low. However, they cannot know with any certainty the precise risk of an arbitrage trade on the current or any future Business Day. Rather, they must use information from the past to evaluate the likely risk of an arbitrage trade executed today or in the future. More specifically, it is understood that they must use historical data about the performance of a fund whose shares are being arbitrated and the performance of the fund's Proxy Portfolio. From such data, arbitrageurs may be able to develop sufficient insight into the risk of an arbitrage trade to evaluate and price it into the trade.

Description of the Funds

The Shares of each Fund will be issued by T. Rowe Price Exchange-Traded Funds, Inc. ("Issuer"), a corporation organized under the laws of the State of Maryland, which may be comprised of multiple separate series, and registered with the Commission as an open-end management investment company.¹⁴ The investment adviser for the Funds will be T. Rowe Price Associates, Inc. ("Adviser"). State Street Bank and Trust Co. will serve as the Funds' transfer agent, administrator and custodian (the "Transfer Agent", "Administrator", or "Custodian"). T. Rowe Price Investment Services, Inc., a registered broker dealer and an affiliate of the Adviser, will serve as the distributor ("Distributor") of the Shares.

¹⁴ The Issuer is registered under the 1940 Act. On December 11, 2019, the Issuer filed a registration statement on Form N-1A under the Securities Act of 1933 Act ("1933 Act") (15 U.S.C. 77a) and under the 1940 Act relating to the Funds (File Nos. 333-235450 and 811-23494) (the "Registration Statement"). The Issuer filed a seventh amended application for an order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812-14214), dated October 16, 2019 ("Application"). On December 10, 2019, the Commission issued an order ("Exemptive Order") under the 1940 Act granting the exemptions requested in the Application (Investment Company Act Release No. 33713, December 10, 2019). Investments made by the Funds will comply with the conditions set forth in the Application and the Exemptive Order. The description of the operation of the Funds herein is based, in part, on the Registration Statement and the Application.

Proposed Commentary .04 to NYSE Arca Rule 8.601-E provides that, if the investment adviser to the Investment Company issuing Active Proxy Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a “fire wall” between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company’s Actual Portfolio and/or Proxy Portfolio. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company’s portfolio composition or has access to non-public information regarding the Investment Company’s Actual Portfolio or changes thereto or the Proxy Portfolio must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio or changes thereto or the Proxy Portfolio.

Proposed Commentary .04 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Rule 5.2-E(j)(3); however, Commentary .03(a) in connection with the establishment of a “fire wall” between the investment adviser and the broker-dealer reflects the applicable open-end fund’s portfolio, not an underlying benchmark index, as is the case with index-based funds.¹⁵

¹⁵ An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Adviser and its related personnel will be subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder;

Commentary .04 is also similar to Commentary .06 to Rule 8.600-E related to Managed Fund Shares, except that proposed Commentary .04 relates to establishment and maintenance of a “fire wall” between the investment adviser and the broker-dealer applicable to an Investment Company’s Actual Portfolio and/or Proxy Portfolio, and not just to the underlying portfolio, as is the case with Managed Fund Shares.

The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer and has implemented and will maintain a “fire wall” with respect to such broker-dealer affiliate regarding access to information concerning the composition and/or changes to a Fund’s portfolio. In the event (a) the Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Description of the Funds

According to the Application, for each Fund, the Adviser will identify its Proxy Portfolio, which could be a broad-based securities index (e.g., the S&P 500) or a Fund’s recently disclosed portfolio holdings. The Proxy Portfolio will be determined such that at least 80% of its total assets will overlap with the portfolio weightings of a Fund. Although the Adviser may change a

(ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

Fund's Proxy Portfolio at any time, the Adviser currently does not expect to make such changes more frequently than quarterly (for example, in connection with the release of a Fund's portfolio holdings). The Adviser will publish a new Proxy Portfolio for a Fund only before the commencement of trading of such Fund's Shares on that "Business Day,"¹⁶ and the Adviser will not make intra-day changes to the Proxy Portfolio except to correct errors in the published Proxy Portfolio. For the reasons described herein, the Adviser believes that each Fund's Proxy Portfolio will be a high-quality hedging vehicle, the value of which will provide arbitrageurs with a high quality pricing signal.

The Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order as described below in "Other Characteristics of the Funds," and the holdings will be consistent with all requirements in the Application and Exemptive Order.

T. Rowe Price Blue Chip Growth ETF

The investment objective of the T. Rowe Price Blue Chip Growth ETF will be to seek to provide long-term capital growth. Income will be a secondary objective.

The Fund will normally invest at least 80% of its net assets in the common stocks of large and medium-sized blue-chip growth companies that are listed in the United States. These are companies that, in the Adviser's view, are well established in their industries and have the potential for above-average earnings growth. The Fund generally will invest in U.S. and foreign exchange-traded securities, U.S. exchange-traded futures, cash and cash equivalents.

T. Rowe Price Dividend Growth ETF

¹⁶ "Business Day" is defined to mean any day that the Exchange is open, including any day when a Fund satisfies redemption requests as required by section 22(e) of the 1940 Act.

The investment objective of the T. Rowe Price Dividend Growth ETF will be to seek dividend income and long-term capital growth.

The Fund normally will invest at least 65% of the Fund's total assets in stocks listed in the United States, with an emphasis on stocks that have a strong track record of paying dividends or that are expected to increase their dividends over time. The Fund generally will invest in U.S. and foreign exchange-traded securities, U.S. exchange-traded futures cash, and cash equivalents.

T. Rowe Price Growth Stock ETF

The investment objective of the T. Rowe Price Growth Stock ETF will be to seek long-term capital growth.

The Fund will normally invest at least 80% of its net assets in the common stocks of a diversified group of growth companies. While it may invest in companies of any market capitalization, the Fund generally seeks investments in stocks of large-capitalization companies with one or more of the following characteristics: strong cash flow and an above-average rate of earnings growth; the ability to sustain earnings momentum during economic downturns; and occupation of a lucrative niche in the economy and the ability to expand even during times of slow economic growth. The Fund generally will invest in U.S. and foreign exchange-traded securities, U.S. exchange-traded futures, cash and cash equivalents.

T. Rowe Price Equity Income ETF

The investment objective of the T. Rowe Price Equity Income ETF will be to seek a high level of dividend income and long-term capital growth.

The Fund will normally invest at least 80% of its net assets in common stocks listed in the United States, with an emphasis on large-capitalization stocks that have a strong track record of paying dividends or that are believed to be undervalued. The Fund typically will employ a

“value” approach in selecting investments. The Fund generally will invest in U.S. and foreign exchange-traded securities, U.S. exchange-traded futures, cash and cash equivalents.

Other Characteristics of the Funds

With respect to the Funds, Shares will generally be issued and redeemed primarily on an in-kind basis, but may include cash under certain circumstances as described in the Application.¹⁷

With respect to the Funds, in order to provide a hedging vehicle whose performance reliably and highly correlates to the NAV of the relevant Fund, and that is liquid and trades synchronously (that is, during the hours of the Exchange’s Core Trading Session, normally 9:30 a.m. to 4:00 p.m. E.T.) with the Shares of the Funds, a Fund’s Actual Portfolio will (a) be listed on an exchange and the primary trading session of such exchange will trade synchronously with the Exchange’s Core Trading Session, as defined in Rule 7.34-E(a); (b) with respect to exchange-traded futures, be listed on a U.S. futures exchange; or (c) consist of cash and cash equivalents.

Consistent with these representations, each Fund will only invest in exchange-traded common stocks, common stocks listed on a foreign exchange that trade on such exchange synchronously with the Shares (“foreign common stocks”), ETFs,¹⁸ exchange-traded notes (“ETNs”),¹⁹ exchange-traded preferred stocks, exchange-traded American Depositary Receipts

¹⁷ See note 22, *infra*.

¹⁸ For purposes of this filing, ETFs include Investment Company Units (as described in NYSE Arca Rule 5.2-E (j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Rule 8.100-E); and Managed Fund Shares (as described in NYSE Arca Rule 8.600-E). All ETFs will be listed and traded in the U.S. on a national securities exchange. While the Funds may invest in inverse ETFs, the Funds will not invest in leveraged (e.g., 2X, -2X, 3X or -3X) ETFs.

¹⁹ ETNs are securities as described in NYSE Arca Rule 5.2–E(j)(6) (Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked

(“ADRs”),²⁰ exchange-traded real estate investment trusts, exchange-traded commodity pools, exchange-traded metals trusts, exchange-traded currency trusts and exchange-traded futures contracts²¹ (collectively, “exchange-traded instruments”) that trade synchronously with the Fund’s Shares, as well as cash and cash equivalents. For purposes of this filing, cash equivalents are short-term U.S. Treasury securities, government money market funds, and repurchase agreements.

The Proxy Portfolio will not include any asset that is ineligible to be in the Actual Portfolio of the applicable Fund.

Investment Restrictions

The Shares of each Fund will conform to the initial and continued listing criteria under proposed Rule 8.601-E.

Each Fund’s investments will be consistent with its investment objective and with the applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Issuer with respect to the Funds.

Securities). All ETNs will be listed and traded in the U.S. on a national securities exchange. The Funds will not invest in inverse or leveraged (e.g., 2X, -2X, 3X or -3X) ETNs

²⁰ ADRs are issued by a U.S. financial institution (a “depository”) and evidence ownership in a security or pool of securities issued by a foreign issuer that have been deposited with the depository. Each ADR is registered under the Securities Act of 1933 (“1933 Act”) (15 U.S.C. 77a) on Form F-6. ADRs in which a Fund may invest will trade on an exchange.

²¹ Exchange-traded futures are U.S. listed futures contracts where the futures contract’s reference asset is an asset that the Fund could invest in directly, or in the case of an index future, is based on an index of a type of asset that the Fund could invest in directly, such as an S&P 500 index futures contract. All futures contracts that a Fund may invest in will be traded on a U.S. futures exchange.

Purchases and Redemptions

The Issuer will offer, issue and sell Shares of each Fund to investors only in Creation Units through the Distributor on a continuous basis at the NAV per Share next determined after an order in proper form is received. The NAV of each Fund is expected to be determined as of 4:00 p.m. E.T. on each Business Day. The Issuer will sell and redeem Creation Units of each Fund only on a Business Day. A Creation Unit will consist of at least 5,000 Shares.

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 designated Proxy Portfolio, except to the extent that a Fund requires purchases and redemptions to be made entirely or in part on a cash basis, as described below.

If there is a difference between the net asset value 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”).

Each Fund will adopt and implement policies and procedures regarding the composition of its Creation Baskets. The policies and procedures will set forth detailed parameters for the construction and acceptance of baskets that are in the best interests of a Fund, including the process for any revisions to or deviations from, those parameters.

A Fund that normally issues and redeems Creation Units in kind may require purchases and redemptions to be made entirely or in part on a cash basis.²² In such an instance, the Fund will announce, before the open of trading 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, the 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. The Proxy Portfolio will be published each Business Day regardless of whether a Fund decides to issue or redeem Creation Units entirely or in part on a cash basis.

All orders to purchase Creation Units must be placed with the Distributor by or through an Authorized Participant, which is a member or participant of a clearing agency registered with the Commission, which has a written agreement with a Fund or one of its service providers that allows the Authorized Participant to place orders for the purchase and redemption of Creation Units. Except as otherwise permitted, no promoter, principal underwriter (e.g., the Distributor)

²² The Adviser represents that, to the extent the Issuer effects the creation or redemption of Shares in cash, such transactions will be effected in the same manner for all “Authorized Participants” (as defined below).

or affiliated person of a Fund, or any affiliated person of such person, will be an Authorized Participant in Shares.

Validly submitted orders to purchase or redeem Creation Units on each Business Day will be accepted until the end of the Core Trading Session (the “Order Cut-Off Time”), generally 4:00 p.m. E.T., on the Business Day that the order is placed (the “Transmittal Date”). All Creation Unit orders must be received by the Distributor no later than the Order Cut-Off Time in order to receive the NAV determined on the Transmittal Date. When the Exchange closes earlier than normal, a Fund may require orders for Creation Units to be placed earlier in the Business Day.

Availability of Information

The Funds’ website, which will be publicly available at no charge prior to the public offering of Shares, will include a prospectus for each Fund that may be downloaded. In addition, the website will include the following:

- Quantitative information updated on a daily basis, including, on a per Share basis for each Fund, the prior Business Day’s NAV and the Closing Price²³ or Bid/Ask Price of Shares, and a calculation of the premium/discount of the Closing Price or Bid/Ask Price²⁴ against such NAV and any other information regarding premiums and discounts as may be required for other ETFs under rule 6c-11 under the 1940 Act. The website will

²³ The “Closing Price” of Shares is the official closing price of Shares on the Exchange’s Core Trading Session.

²⁴ The “Bid/Ask Price” is the midpoint of the highest bid and lowest offer based on the National Best Bid and Offer at the time that a Fund’s NAV is calculated. The “National Best Bid and Offer” is the current national best bid and national best offer as disseminated by the Consolidated Quotation System or UTP Plan Securities Information Processor.

also disclose any information regarding the bid-ask spread for each Fund as may be required for other ETFs under rule 6c-11 under the 1940 Act.

- Each Fund’s Proxy Portfolio.
- Bid-ask spread information for each Fund.

Each Fund’s website also will disclose the information required under proposed Rule 8.601-E (c)(3).²⁵

Investors interested in a particular Fund can also obtain its prospectus, statement of additional information (“SAI”), shareholder reports, Form N-CSR and Form N-CEN. Investors may access complete portfolio schedules for the Funds on Form N-CSR and Form N-PORT. The prospectus, SAI and shareholder reports will be available free upon request from the Funds, and those documents and the Form N-CSR and Form N-CEN may be viewed on-screen or downloaded from the Commission’s website at <http://www.sec.gov>.

Information regarding the market price of Shares and trading volume in Shares will be continually available on a real-time basis throughout the day on brokers’ computer screens and other electronic services. The previous day’s closing price and trading volume information may be published daily in the financial section of newspapers.

²⁵ See note 9, *supra*. Proposed Rule 8.601-E (c)(3) provides that the website for each series of Active Proxy Portfolio Shares shall disclose the information regarding the Proxy Portfolio as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series, including the following, to the extent applicable:

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

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.²⁶ Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12-E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Rule 8.601-E(d)(2)(D), which sets forth circumstances under which Shares of the Fund will be halted.

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

In addition, upon notification to the Exchange by the issuer of a series of Active Proxy Portfolio Shares, that the NAV, Proxy Portfolio or Actual Portfolio with respect to a series of Active Proxy Portfolio Shares is not disseminated to all market participants at the same time, the Exchange shall halt trading in such series until such time as the NAV, Proxy Portfolio or Actual Portfolio is available to all market participants at the same time. The issuer has represented to the Exchange that it will provide the Exchange with prompt notification upon the existence of any such condition or set of conditions.

²⁶ See NYSE Arca Rule 7.12-E.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. E.T. in accordance with NYSE Arca Rule 7.34-E (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6-E, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.601-E.

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Exchange has appropriate rules to facilitate trading in the Shares during all trading sessions.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.²⁷ The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

²⁷ FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

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.

FINRA, on behalf of the Exchange, or the Exchange or both will communicate as needed regarding trading in the Shares, certain exchange-traded equities, ETFs, ETNs and futures with other markets and other entities that are members of the Intermarket Surveillance Group (“ISG”), and FINRA, on behalf of the Exchange, or the Exchange or both may obtain trading information regarding trading such securities and financial instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.²⁸

The Funds’ Adviser will make available to FINRA and the Exchange the portfolio holdings of each Fund in order to facilitate the performance of the surveillances referred to above on a confidential basis.

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

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

²⁸ For a list of the current members of ISG, see www.isgportal.org.

or FINRA the daily portfolio holdings of each series of Active Proxy Portfolio Shares. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Active Proxy Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of Active Proxy Portfolio Shares.

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

With respect to the Funds, all statements and representations made in this filing regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange. The issuer has

represented to the Exchange that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (“ETP”) Holders in an Information Bulletin (“Bulletin”) of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) the procedures for purchases and redemptions of Shares; (2) NYSE Arca Rule 9.2-E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (4) that holdings of a Fund will not be disclosed daily; and (5) trading information.

In addition, the Bulletin will reference that the 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 as of 4:00 p.m. E.T. each trading day.

The Exchange notes that the proposed change is not otherwise intended to address any other issues and that the Exchange is not aware of any problems that Equity Trading Permit Holders or issuers would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that 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) of the Act,³⁰ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

With respect to the proposed listing and trading of Shares of the Funds, the Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.601-E. One-hundred percent of the value of a Fund's Actual Portfolio (except for cash, cash equivalents and Treasury securities) at the time of purchase will be listed on U.S. or foreign securities exchanges (or, in the limited case of futures contracts, U.S. futures exchanges). The listing and trading of such securities is subject to rules of the exchanges on which they are listed and traded, as approved by the Commission. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, certain exchange-traded equities, ETFs, ETNs and futures with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading such securities and financial instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such

²⁹ 15 U.S.C. 78f(b).

³⁰ 15 U.S.C. 78f(b)(5).

securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

With respect to the Funds, the Exchange believes that a Fund's Proxy Portfolio, as well as 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 Shares' bid/ask price and NAV.

The pricing efficiency with respect to trading a series of Active Proxy Portfolio Shares will not generally rest on the ability of market participants to arbitrage between the Active Proxy Portfolio Shares and a fund's portfolio, but rather on the ability of market participants to assess a fund's underlying value accurately enough throughout the trading day in order to hedge positions in Active Proxy Portfolio Shares effectively. Professional traders will buy Active Proxy Portfolio Shares that they perceive to be trading at a price less than that which will be available at a subsequent time, and sell Active Proxy Portfolio 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 series of Active Proxy Portfolio 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" Active Proxy Portfolio Shares through such trading and will hedge such risk wholly or partly by simultaneously taking positions in correlated assets³¹ or by netting the exposure against other, offsetting trading positions – much as such firms do with existing ETFs and other equities.

³¹ 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,

With respect to the Funds, disclosure of the Proxy Portfolio, a Fund's investment objective and principal investment strategies in its prospectus and SAI, should permit professional investors to engage readily in this type of hedging activity.³²

It is expected that market participants will utilize the Proxy Portfolio as a pricing signal and high quality hedging vehicle and gain experience with how various market factors (e.g., general market movements, sensitivity or correlations of the Proxy Portfolio to intraday movements in interest rates or commodity prices, other benchmarks, etc.) affect the value of the Proxy Portfolio in order to determine how best to hedge long or short positions taken in Shares in a manner that will permit them to provide a bid/ask price for Shares that is near to the value of the Proxy Portfolio throughout the day. The ability of market participants to accurately hedge their positions should serve to minimize any divergence between the secondary market price of the Shares and a Fund's NAV, as well as create liquidity in the Shares. With respect to trading of Shares of the Funds, the ability of market participants to buy and sell Shares at prices near the NAV is dependent upon their assessment that the value of the Proxy Portfolio is a reliable,

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. With the Proxy Portfolio identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of the Proxy Portfolio throughout the trade period, making corrections where warranted.

³² With respect to trading in Shares of the Funds, market participants can 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 intra-day value of the Funds' holdings without taking undue risk by utilizing the Proxy Portfolio directly as a hedge, analyzing other data that may be disseminated by a Fund, gaining experience with how various market factors (e.g., general market movements, sensitivity of the value of the Proxy Portfolio to intraday movements in interest rates or commodity prices, etc.) affect value of the Proxy Portfolio, and by finding hedges for their long or short positions in Shares using instruments correlated with such factors.

indicative real-time value for a Fund's underlying holdings. Market participants are expected to accept the value of the Proxy Portfolio as a reliable, indicative real-time value because (1) the Proxy Portfolio will be determined such that at least 80% of its total assets will overlap with the portfolio weightings of the Fund, (2) the securities in which the Funds plan 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 value of the Proxy Portfolio at or near the close of trading is predictive of the actual NAV.

The disclosure of a Fund's Proxy Portfolio and the ability of Authorized Participants to create and redeem each Business Day at the NAV, will be crucial 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.

With respect to Active Proxy Portfolio Shares generally, 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 an issue of Active Proxy Portfolio Shares that the NAV per share of such issue will be calculated daily and that the NAV 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, and its Form N-CSR and Form N-CEN. A fund's SAI and shareholder reports will be available free upon request from the applicable fund, and those documents and the Form N-CSR and Form N-CEN may be viewed on-screen or downloaded from the Commission's website.

Proposed Commentary .03 to NYSE Arca Rule 8.601-E provides that the Exchange will implement and maintain written surveillance procedures for Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will, upon

request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Active Proxy Portfolio Shares. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Active Proxy Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of Active Proxy Portfolio Shares. With respect to the Fund, the Adviser will make available daily to FINRA and the Exchange the portfolio holdings of the Fund upon request in order to facilitate the performance of the surveillances referred to above.

The Exchange will utilize its existing procedures to monitor issuer compliance with the requirements of proposed Rule 8.601-E. For example, the Exchange will continue to use intraday alerts that will notify Exchange personnel of trading activity throughout the day that may indicate that unusual conditions or circumstances are present that could be detrimental to the maintenance of a fair and orderly market. The Exchange will require from the issuer of a series of Active Proxy Portfolio Shares, upon initial listing and periodically thereafter, a representation that it is in compliance with Rule 8.601-E. The Exchange notes that proposed Commentary .01 to Rule 8.601-E would require an issuer of Active Proxy Portfolio Shares to notify the Exchange of any failure to comply with the continued listing requirements of Rule 8.601-E.³³ 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. The Exchange will rely on the foregoing procedures to become aware of any non-compliance with the requirements of Rule 8.601-E.

³³ Id. [sic]

In addition, with respect to the Funds, a large amount of information will be publicly available regarding the Funds and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association high-speed line. The website for the Funds will include a form of the prospectus for the Funds 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 ETP Holders in a Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of a Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12-E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Rule 8.601-E(d)(2)(D), which sets forth circumstances under which Shares of the Funds may be halted. In addition, as noted above, investors will have ready access to the Proxy Portfolio, and quotation and last sale information for the Shares. The Shares will conform to the initial and continued listing criteria under proposed Rule 8.601-E.

The components of a Fund's Actual Portfolio will (a) be listed on an exchange and the primary trading session of such exchange will trade synchronously with the Exchange's Core Trading Session, as defined in Rule 7.34-E(a); (b) with respect to exchange-traded futures, be listed on a U.S. futures exchange; or (c) consist of cash and cash equivalents.

The proposed rule change is designed to improve 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, with respect to the Active Proxy Portfolio Shares generally, the Exchange has in place surveillance procedures relating to trading in such securities 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, with respect to the Funds, investors will have ready access to information regarding the Proxy Portfolio and quotation and last sale information for the Shares.

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

In accordance with Section 6(b)(8) of the Act,³⁴ the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change would permit listing and trading of another type of actively-managed ETF that has characteristics different from existing actively-managed and index ETFs, including that the portfolio is disclosed at least once quarterly as opposed to daily, and would introduce additional competition among various ETF products to the benefit of investors.

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

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

IV. Proceedings to Determine Whether to Approve or Disapprove SR-NYSEArca-2019-92, as Modified by Amendment No. 1, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act³⁵ to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and

³⁴ 15 U.S.C. 78f(b)(8).

³⁵ 15 U.S.C. 78s(b)(2)(B).

policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,³⁶ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Exchange Act, which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, ...to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest."³⁷

V. Procedure: Request for Written Comments

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

³⁶ Id.

³⁷ 15 U.S.C. 78f(b)(5).

arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.³⁸

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register].

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in Amendment No. 1,³⁹ and any other issues raised by the proposed rule change, as modified by Amendment No. 1, under the Exchange Act. In this regard, the Commission seeks commenters' views regarding whether the Exchange's proposed rule to list and trade Active Proxy Portfolio Shares, which are actively managed exchange-traded products for which the portfolio holdings would be disclosed on a quarterly, rather than daily, basis, is adequately designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest, and is consistent with the maintenance of a fair and orderly market under the Exchange Act. In particular, the Commission seeks commenters' views regarding whether the Exchange's proposed listing rule provisions as they relate to foreign securities are adequate to prevent fraud and manipulation. In addition, the Commission seeks commenters' views

³⁸ Section 19(b)(2) of the Exchange Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding – either oral or notice and opportunity for written comments – is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

³⁹ See supra note 7.

regarding whether the Exchange's proposed listing rule provisions are adequate to prevent the use and dissemination of material non-public information relating to the Funds.

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2019-92 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEArca-2019-92. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment

submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2019-92 and should be submitted on or before [insert date 21 days from publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁰

J. Matthew DeLesDernier
Assistant Secretary

⁴⁰ 17 CFR 200.30-3(a)(57).