

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93264; File No. SR-NYSEArca-2021-84)

October 6, 2021

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to List and Trade Shares of the Schwab Ariel ESG ETF

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on September 24, 2021, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the following under NYSE Arca Rule 8.601-E: Schwab Ariel ESG ETF. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange has adopted 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.⁴ Commentary .01 to Rule 8.601-E requires 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 submitting this proposal in order to list and trade shares (“Shares”) of Active Proxy Portfolio Shares of the Schwab Ariel ESG

⁴ See Securities Exchange Act Release No. 89185 (June 29, 2020), 85 FR 40328 (July 6, 2020) (SR-NYSEArca-2019-95). Rule 8.601-E(c)(1) provides that “[t]he term “Active Proxy Portfolio Share” means a security that (a) is issued by a investment company registered under the Investment Company Act of 1940 (“Investment Company”) organized as an open-end management investment company that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; (b) is issued in a specified minimum number of shares, or multiples thereof, in return for a deposit by the purchaser of the Proxy Portfolio and/or cash with a value equal to the next determined net asset value (“NAV”); (c) when aggregated in the same specified minimum number of Active Proxy Portfolio Shares, or multiples thereof, may be redeemed at a holder’s request in return for the Proxy Portfolio and/or cash to the holder by the issuer with a value equal to the next determined NAV; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.” Rule 8.601-E(c)(2) provides that “[t]he 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.” Rule 8.601-E(c)(3) provides that “[t]he term “Proxy Portfolio” means a specified portfolio of securities, other financial instruments and/or cash designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series.”

ETF (the “Fund”) under 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, Active Proxy Portfolio Shares differ from Managed Fund Shares in the following important respects. First, in contrast to Managed Fund Shares, which are actively-managed funds listed and traded under NYSE Arca Rule 8.600-E⁵ and for which a “Disclosed Portfolio” is required to be disseminated at least once daily,⁶ the portfolio for an issue of Active Proxy Portfolio Shares will be publicly disclosed within at least 60 days following the end of every fiscal quarter in accordance with normal disclosure requirements otherwise applicable to open-end management investment companies registered under the Investment Company Act of 1940 (the “1940 Act”).⁷ The composition of the portfolio of an

⁵ The Commission has previously approved listing and trading on the Exchange of a number of issues of Managed Fund Shares under NYSE Arca Rule 8.600-E. See, e.g., Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR-NYSEArca-2008-31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR-NYSEArca-2009-55) (order approving listing of Dent Tactical ETF); 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR-NYSEArca-2010-79) (order approving Exchange listing and trading of Cambria Global Tactical ETF); 63802 (January 31, 2011), 76 FR 6503 (February 4, 2011) (SR-NYSEArca-2010-118) (order approving Exchange listing and trading of the SiM Dynamic Allocation Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF). The Commission also has approved a proposed rule change relating to generic listing standards for Managed Fund Shares. See Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016) (SR-NYSEArca-2015-110) (amending NYSE Arca Equities Rule 8.600 to adopt generic listing standards for Managed Fund Shares).

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

⁷ A mutual fund is required to file with the Commission its complete portfolio schedules

issue of Active Proxy Portfolio Shares would not be available at commencement of Exchange listing and trading. Second, in connection with the creation and redemption of Active Proxy Portfolio Shares, such creation or redemption may be exchanged for a Proxy Portfolio and/or cash with a value equal to the next-determined NAV. A series of Active Proxy Portfolio Shares will disclose the Proxy Portfolio on a daily basis, which, as described above, is designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares, instead of the actual holdings of the Investment Company, as provided by a series of Managed Fund Shares.

for the second and fourth fiscal quarters on Form N-CSR under the 1940 Act. Information reported on Form N-PORT for the third month of a fund's fiscal quarter will be made publicly available 60 days after the end of a fund's fiscal quarter. Form N-PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a series of Active Proxy Portfolio Shares' Statement of Additional Information ("SAI"), its Shareholder Reports, its Form N-CSR, filed twice a year, and its Form N-CEN, filed annually. A series of Active Proxy Portfolio Shares' SAI and Shareholder Reports will be available free upon request from the Investment Company, and those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed on-screen or downloaded from the Commission's website at www.sec.gov.

The Commission has previously approved⁸ and noticed for immediate effectiveness⁹ proposals for the listing and trading on the Exchange of series of Active Proxy Portfolio Shares under NYSE Arca Rule 8.601-E.

The Shares of the Fund will be issued by the Schwab Strategic Trust (the “Trust”), which is organized as a statutory trust under the laws of the state of Delaware and registered with the Commission as an open-end management investment company.¹⁰ Charles Schwab Investment

⁸ See Securities Exchange Act Release Nos. 89185 (June 29, 2020), 85 FR 40328 (July 6, 2020) (SR-NYSEArca-2019-95) (Notice of Filing of Amendment No. 6 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 6, to Adopt NYSE Arca Rule 8.601-E to Permit the Listing and Trading of Active Proxy Portfolio Shares and To List and Trade Shares of the Natixis U.S. Equity Opportunities ETF Under Proposed NYSE Arca Rule 8.601-E) (the “Natixis Order”); 89192 (June 30, 2020), 85 FR 40699 (July 7, 2020) (SR-NYSEArca-2019-96) (Notice of Filing of Amendment No. 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 5, to List and Trade Two Series of Active Proxy Portfolio Shares Issued by the American Century ETF Trust under NYSE Arca Rule 8.601-E); 89191 (June 30, 2020), 85 FR 40358 (July 6, 2020) (SR-NYSEArca-2019-92) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, to List and Trade Four Series of Active Proxy Portfolio Shares Issued by T. Rowe Price Exchange-Traded Funds, Inc. under NYSE Arca Rule 8.601-E); 89438 (July 31, 2020), 85 FR 47821 (August 6, 2020) (SR-NYSEArca-2020-51) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of Natixis Vaughan Nelson Select ETF and Natixis Vaughan Nelson MidCap ETF under NYSE Arca Rule 8.601-E). See also Securities Exchange Act Release Nos. 88887 (May 15, 2020), 85 FR 30990 (May 21, 2020) (SR-CboeBZX-2019-107) (Notice of Filing of Amendment No. 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 5, to Adopt Rule 14.11(m), Tracking Fund Shares, and to List and Trade Shares of the Fidelity Blue Chip Value ETF, Fidelity Blue Chip Growth ETF, and Fidelity New Millennium ETF).

⁹ See Securities Exchange Act Release No. 92104 (June 3, 2021), 86 FR 30635 (June 9, 2021) (NYSEArca-2021-46) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to List and Trade Shares of the Nuveen Santa Barbara Dividend Growth ETF, Nuveen Small Cap Select ETF, and Nuveen Winslow Large-Cap Growth ESG ETF Under NYSE Arca Rule 8.601-E (Active Proxy Portfolio Shares).

¹⁰ The Trust is registered under the 1940 Act. On April 5, 2021, the Trust filed a registration statement on Form N-1A under the under the Securities Act of 1933 (the “1933 Act”) and the 1940 Act relating to the Fund (File No. 811-22311) (the “Registration Statement”). The effectiveness of the Registration Statement was delayed

Management, Inc., will be the investment adviser to the Fund (the “Adviser”). Ariel Investments, LLC will be the sub-adviser (the “Sub-Adviser”) for the Fund. State Street Bank and Trust Company will serve as the Fund’s custodian and transfer agent. SEI Investments Distribution Co. will act as the distributor (the “Distributor”) for the Fund.

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

by Post-Effective Amendment No. 134 to the Registration Statement, which was filed on July 1, 2021, Post-Effective Amendment No. 135 to the Registration Statement, which was filed on July 29, 2021, and Post-Effective Amendment No. 136 to the Registration Statement, which was filed on August 26, 2021, each filed pursuant to paragraph (a) of Rule 485 of the 1933 Act for the sole purpose of delaying the effectiveness of the Registration Statement. The Trust filed an 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. 812-15216), dated April 5, 2021, and an amendment to the application on May 20, 2021 (the “Application”). On July 7, 2021, the Commission issued an order (the “Exemptive Order”) under the 1940 Act granting the exemptions requested in the Application (Investment Company Act Release No. 34323, July 7, 2021). Investments made by the Fund will comply with the conditions set forth in the Application and the Exemptive Order. The description of the operation of the Fund herein is based, in part, on the Registration Statement, the Application and the Exemptive Order. The Exchange will not commence trading in Shares of the Fund until the Registration Statement is effective.

material non-public information regarding the Actual Portfolio and/or Proxy Portfolio or changes thereto. Commentary .04 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Rule 5.2-E(j)(3); however, Commentary .04, in connection with the establishment of a “firewall” between the investment adviser and the broker-dealer, reflects the applicable open-end fund’s portfolio, not an underlying benchmark index, as is the case with index-based funds.¹¹ Commentary .04 is also similar to Commentary .06 to Rule 8.600-E related to Managed Fund Shares, except that Commentary .04 relates to establishment and maintenance of a “firewall” between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, applicable to an Investment Company’s Actual Portfolio and/or Proxy Portfolio or changes thereto, and not just to the underlying portfolio, as is the case with Managed Fund Shares.

In addition, Commentary .05 to Rule 8.601-E provides that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company’s Actual Portfolio or the Proxy Portfolio or changes thereto, must be subject to procedures reasonably designed to prevent the use and

¹¹ An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Adviser and Sub-Adviser and their related personnel will be subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

dissemination of material non-public information regarding the applicable Investment Company Actual Portfolio or the Proxy Portfolio or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a “firewall” between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company Actual Portfolio or Proxy Portfolio.

The Adviser and Sub-Adviser are not registered as broker-dealers but are affiliated with broker-dealers. The Adviser and Sub-Adviser each have implemented and will maintain a “firewall” with respect to such broker-dealer affiliates regarding access to information concerning the composition of and/or changes to the Fund’s Actual Portfolio and/or Proxy Portfolio.

In the event (a) the Adviser and/or Sub-Adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is or becomes a registered broker-dealer, or becomes affiliated with a broker-dealer, it will implement and maintain a “firewall” with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund’s Actual Portfolio and/or Proxy Portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund’s Actual Portfolio and/or Proxy Portfolio or changes thereto. Any person related to the Adviser, Sub-Adviser, or the Fund who makes decisions pertaining to the Fund’s Actual Portfolio or the Proxy Portfolio or has access to non-public information regarding the Fund’s Actual Portfolio and/or the Proxy Portfolio or changes thereto are subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Fund’s Actual Portfolio and/or

the Proxy Portfolio or changes thereto.

In addition, any person or entity, including any service provider for the Fund, who has access to non-public information regarding the Fund's Actual Portfolio or the Proxy Portfolio or changes thereto, will be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Fund's Actual Portfolio and/or the Proxy Portfolio or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity has erected and will maintain a "firewall" between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to the Fund's Actual Portfolio and/or Proxy Portfolio.

Description of the Fund

According to the Registration Statement, the Adviser or Sub-Adviser will identify a Proxy Portfolio for the Fund. The Fund's Proxy Portfolio is not the Fund's Actual Portfolio but will be designed to closely track the daily performance of the Fund through a "Factor Model" analysis of the Actual Portfolio. The Fund will generate the Proxy Portfolio by applying the Factor Model to a "Model Universe" comprised of securities that the Fund can purchase. The Proxy Portfolio will only include investments the Fund is permitted to hold. While the Proxy Portfolio and the Actual Portfolio will likely hold some or many of the same securities, the Proxy Portfolio and Actual Portfolio may not include identical securities.

The composition of the Proxy Portfolio will be published on the Fund's website each Business Day¹² before commencement of trading in the Shares and will include the following

¹² "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.

information for each portfolio holding in the Proxy Portfolio: (1) ticker symbol; (2) CUSIP or other identifier; (3) description of holding; (4) quantity of each security or other asset held; and (5) percentage weight of the holding in the Proxy Portfolio. The Proxy Portfolio may be reconstituted daily, and the Adviser will not make intra-day changes to the Proxy Portfolio except to correct errors in the published Proxy Portfolio.

In addition to the Proxy Portfolio, the Fund's website will publish a variety of other information metrics regarding the relative behavior of the Proxy Portfolio and the Actual Portfolio, including the "Proxy Overlap"¹³ and the "Tracking Error"¹⁴ for the Fund.

Schwab Ariel ESG ETF

The Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order, and the holdings will be consistent with all requirements in the Application and Exemptive Order.¹⁵ Any foreign common stocks held by the Fund will be

¹³ According to the Registration Statement, "Proxy Overlap" is the percentage weight overlap between the holdings of the prior Business Day's Proxy Portfolio compared to the Actual Portfolio's holdings that formed the basis for the Fund's calculation of NAV at the end of the prior Business Day.

¹⁴ According to the Registration Statement, "Tracking Error" is the standard deviation over the past three months of the daily proxy spread (i.e., the difference, in percentage terms, between the Proxy Portfolio per Share NAV and that of the Actual Portfolio at the end of the trading day).

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

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

According to the Registration Statement, the Fund’s investment objective is to seek long-term capital appreciation. The Fund will invest primarily in exchange-traded equity securities of U.S. companies that have been evaluated based on certain environmental, social, and governance (“ESG”) criteria, as determined by the Sub-Adviser. The Fund will normally invest in exchange-traded equity securities of small- and mid-capitalization companies.

Investment Restrictions

The Shares of the Fund will conform to the initial and continued listing criteria under Rule 8.601-E. The Fund’s holdings will be limited to those described herein and consistent with permissible holdings as described in the Application and Exemptive Order and all requirements in the Application and Exemptive Order.¹⁶

The Fund’s investments, including U.S. exchange traded futures, will be consistent with its investment objective and will not be used to enhance leverage (although certain U.S. exchange traded futures and other investments may result in leverage). That is, the Fund’s investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2X or -3X) of the Fund’s primary broad-based securities benchmark index (as defined in Form N-1A).¹⁷

derivatives other than U.S. exchange-traded futures, will not borrow for investment purposes, and will not purchase any securities that are illiquid investments at the time of purchase.

¹⁶ Id.

¹⁷ The Fund’s broad-based securities benchmark index will be identified in a future amendment to its Registration Statement following the Fund’s first full calendar year of performance.

Creations and Redemptions of Shares

According to the Registration Statement, the Trust will issue and sell Shares of the Fund only in specified minimum size “Creation Units” through the Distributor on a continuous basis at their NAV next determined after receipt of an order in proper form on any Business Day. The NAV of the Fund’s Shares will be calculated each Business Day as of the close of regular trading on the Exchange, ordinarily 4:00 p.m. E.T. A Creation Unit will generally consist of at least 5,000 Shares.

According to the Registration Statement, Shares of the Fund will be purchased and redeemed in Creation Units. Creation Units are typically purchased and redeemed in-kind, but they may also be purchased and redeemed, in whole or in part, for cash in the Adviser’s discretion. Accordingly, purchasers will generally be required to purchase Creation Units by making an in-kind deposit of a designated portfolio of securities (the “Deposit Securities”). If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the “Cash Component”). Together, the Deposit Securities and the Cash Component will constitute the “Fund Deposit.”

Redemption of Creation Units would work much like the process to purchase Creation Units, but in reverse. Shareholders redeeming their Shares will generally receive an in-kind transfer of specified instruments (“Redemption Instruments”).

The names and quantities of the instruments that constitute the Deposit Securities and Redemption Instruments for the Fund (collectively, the “Creation Basket”) will be the same as the Fund’s Proxy Portfolio, except to the extent purchases and redemptions are made entirely or

in part on a cash basis.

Creation Units of the Fund may be purchased and/or redeemed entirely for cash. When full or partial cash purchases or redemptions of Creation Units are available or specified for the Fund, they will be effected in essentially the same manner as in-kind purchases or redemptions thereof. The Fund may determine, upon receiving a purchase or redemption order from an authorized participant (“Authorized Participant”), to have the purchase or redemption, as applicable, be made entirely or in part in cash.

Each Business Day, prior to the opening of trading on the Exchange, the Fund will publish the Creation Basket for that day through the National Securities Clearing Corporation or another method of public dissemination. The published Creation Basket will apply until a new Creation Basket is announced on the following Business Day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket.

All orders to purchase or redeem Creation Units must be placed by or through an Authorized Participant that has entered into an Authorized Participant Agreement with the Fund’s Distributor. Orders must be transmitted by an Authorized Participant pursuant to procedures set forth in the Participant Agreement. The date on which an order to purchase or redeem Creation Units is received and accepted is referred to as the “Transmittal Date.” All Creation Unit orders must be received 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, the Fund may require orders for Creation Units to be placed earlier in the Business Day.

Availability of Information

The Fund’s website (www.schwabassetmanagement.com), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund

that may be downloaded. The Fund's website will include on a daily basis, per Share for the Fund, the prior Business Day's NAV and the "Closing Price" or "Bid/Ask Price,"¹⁸ and a calculation of the premium/discount of the Closing Price or Bid/Ask Price against such NAV.¹⁹ The Adviser has represented that the Fund's website will also provide: (1) any other information regarding premiums/discounts as may be required for other ETFs under Rule 6c-11 under the 1940 Act, as amended, and (2) any information regarding the bid/ask spread for the Fund as may be required for other ETFs under Rule 6c-11 under the 1940 Act, as amended. The Fund's website also will disclose the information required under Rule 8.601-E(c)(3).²⁰ The website and information will be publicly available at no charge.

The identity and quantity of investments in the Proxy Portfolio will be publicly available on the Fund's website before the commencement of trading in Shares on each Business Day. The website will also include information relating to the Proxy Overlap and Tracking Error, as discussed above.

Typical mutual fund-style annual, semi-annual and quarterly disclosures contained in the

¹⁸ The records relating to Bid/Ask Prices will be retained by the Fund or its service providers. The "Bid/Ask Price" is the midpoint of the highest bid and lowest offer based upon the National Best Bid and Offer as of the time of calculation of the Fund's NAV. The "National Best Bid and Offer" is the current national best bid and national best offer as disseminated by the Consolidated Quotation System or UTP Plan Securities Information Processor. The "Closing Price" of Shares is the official closing price of the Shares on the Exchange.

¹⁹ The "premium/discount" refers to the premium or discount to the NAV at the end of a trading day and will be calculated based on the last Bid/Ask Price or the Closing Price on a given trading day.

²⁰ See note 4, *supra*. 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 1940 Act applicable to such series, including the following, to the extent applicable: (i) Ticker symbol; (ii) CUSIP or other identifier; (iii) Description of holding; (iv) Quantity of each security or other asset held; and (v) Percentage weighting of the holding in the portfolio.

Fund's Commission filings will be provided on the Fund's website on a current basis.²¹ Thus, the Fund will publish the portfolio contents of its Actual Portfolio on a periodic basis, and no less than 60 days after the end of every fiscal quarter.

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

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 for the Shares will be published daily in the financial section of newspapers.

Quotation and last sale information for the Shares and U.S. exchange-traded instruments (excluding futures contracts) will be available via the Consolidated Tape Association ("CTA") high-speed line, from the exchanges on which such securities trade, or through major market data vendors or subscription services. Quotation and last sale information for futures contracts will be available from the exchanges on which they trade. Intraday price information for all exchange-traded instruments, which include all eligible instruments except cash and cash equivalents, will be available from the exchanges on which they trade, or through major market data vendors or subscription services. Intraday price information for cash equivalents is

²¹ See note 7, supra.

available through major market data vendors, subscription services, and/or pricing services.

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.²² 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, Rule 8.601-E(d)(2)(D) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Active Proxy Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Active Proxy Portfolio Shares inadvisable. These may include: (a) the extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Portfolio and/or Actual Portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. If the Exchange becomes aware that the NAV, Proxy Portfolio, or Actual Portfolio with respect to a series of Active Proxy Portfolio Shares is not disseminated to all market participants at the same time, the Exchange shall halt trading in such series until such time as the NAV, Proxy Portfolio, or Actual Portfolio is available to all market participants at the same time.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the

²² See NYSE Arca Rule 7.12-E.

Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace in all trading sessions in accordance with NYSE Arca Rule 7.34-E(a). As provided in NYSE Arca Rule 7.6-E, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

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

A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange. In addition, pursuant to Rule 8.601-E(d)(1)(B), the Exchange, prior to commencement of trading in the Shares, will obtain a representation from the Trust that the NAV per Share of the Fund will be calculated daily and that the NAV, Proxy Portfolio, and the Actual Portfolio for the Fund will be made available to all market participants at the same time.

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

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules

and applicable federal securities laws.²³ The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

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

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities and underlying exchange-traded instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and underlying exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.²⁴

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

²³ FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

²⁴ For a list of the current members of ISG, see www.isgportal.org.

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

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

The Exchange will utilize its existing procedures to monitor issuer compliance with the requirements of 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 Commentary .01 to Rule 8.601-E requires an issuer of Active Proxy Portfolio Shares to notify the Exchange of any failure to comply with the continued listing requirements of Rule 8.601-E. In addition, the Exchange will require issuers to represent that they will notify the Exchange of any failure to comply with the terms of applicable exemptive and no-action relief. As part of its surveillance procedures, the

Exchange will rely on the foregoing procedures to become aware of any non-compliance with the requirements of Rule 8.601-E.

With respect to the Fund, 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 Exchange will obtain a representation from the Trust, prior to commencement of trading in the Shares of the Fund, that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5-E(m).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,²⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁶ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.²⁷

With respect to the proposed listing and trading of Shares of the Fund, the Exchange

²⁵ 15 U.S.C. 78f(b).

²⁶ 15 U.S.C. 78f(b)(5).

²⁷ The Exchange represents that, for initial and continued listing, the Fund will be in compliance with Rule 10A-3 under the Act, as provided by NYSE Arca Rule 5.3-E.

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 the Fund's Actual Portfolio (except for cash and cash equivalents) 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 U.S. securities is subject to rules of the exchanges on which they are listed and traded, as approved by the Commission.

The Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order, and the holdings will be consistent with all requirements in the Application and Exemptive Order.²⁸

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

The daily dissemination of the identity and quantity of Proxy Portfolio component investments, together with the right of Authorized Participants to create and redeem each day at

²⁸ See note 14 [sic], supra.

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

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 Trust that the NAV per Share of the Fund will be calculated daily and that the NAV, Proxy Portfolio, and Actual Portfolio for the Fund will be made available to all market participants at the same time. Investors can obtain the Fund's SAI, shareholder reports, and its Form N-CSR, Form N-PORT, and Form N-CEN. The Fund's SAI and shareholder reports will be available free upon request from the Fund, and those documents and the Form N-CSR, Form N-PORT, and Form N-CEN may be viewed on-screen or downloaded from the Commission's website.

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 compliance with the requirements of 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 Trust, upon initial listing and periodically thereafter, a representation that the Fund is in compliance with Rule 8.601-E. The Exchange notes that Commentary .01 to Rule 8.601-E requires the issuer of the 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 the issuer to represent that it 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.

In addition, with respect to the Fund, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency.

Quotation and last sale information for the Shares and U.S. exchange-traded instruments (excluding futures contracts) will be available via the CTA high-speed line, from the exchanges on which such securities trade, or through major market data vendors or subscription

services. Intraday price information for all exchange-traded instruments, which include all eligible instruments except cash and cash equivalents, will be available from the exchanges on which they trade, or through major market data vendors or subscription services. Quotation and last sale information for futures contracts will be available from the exchanges on which they trade. Intraday price information for cash equivalents is available through major market data vendors, subscription services, and/or pricing services.

The website for the Fund will include a form of the prospectus that may be downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis. Trading in Shares of the 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 Fund will 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 identity and quantity of investments in the Proxy Portfolio will be publicly available on the Fund's website before the commencement of trading in Shares on each Business Day. The Shares will conform to the initial and continued listing criteria under Rule 8.601-E.²⁹

The Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order, and the holdings will be consistent with all requirements in the Application and Exemptive Order.³⁰ Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a

²⁹ See note 4, supra.

³⁰ See note 14 [sic], supra.

comprehensive surveillance sharing agreement.

The components of the 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 perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange will obtain a representation from the Adviser, prior to commencement of trading in the Shares of the Fund, that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5-E(m).

As noted above, with respect to the Fund, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, with respect to the Fund, 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

The Exchange does not believe that the proposed rule change will impose any burden on

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

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

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

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act³¹ and Rule 19b-4(f)(6) thereunder.³²

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

³¹ 15 U.S.C. 78s(b)(3)(A).

³² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2021-84 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-2021-84. 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-2021-84 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

J. Matthew DeLesDernier
Assistant Secretary

³³ 17 CFR 200.30-3(a)(12).