

Required fields are shown with yellow backgrounds and asterisks.

Filing by NYSE Arca, Inc.
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Pilot <input type="checkbox"/> Extension of Time Period for Commission Action * <input type="checkbox"/> Date Expires * <input type="text"/>			Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) * <input type="checkbox"/> Section 806(e)(2) * <input type="checkbox"/>	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>
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Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Contact Information
Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Last Name *
Title *
E-mail *
Telephone * Fax

Signature
Pursuant to the requirements of the Securities Exchange Act of 1934,
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.
(Title *)

Date
By
(Name *)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

- (a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) proposes to amend NYSE Arca Rule 8.601-E to adopt generic listing standards for Active Proxy Portfolio Shares.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1 and the text of the proposed rule change is attached as Exhibit 5.

- (b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action is required under the Exchange’s governing documents. Therefore, the Exchange’s internal procedures with respect to the proposed rule change are complete.

The person on the Exchange staff prepared to respond to questions and comments on the proposed rule change is:

Michael Cavalier
Counsel
NYSE Group, Inc.
(212) 656-2474

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

- (a) Purpose

The Exchange proposes to amend NYSE Arca Rule 8.601-E to adopt generic listing standards for Active Proxy Portfolio Shares. Under the Exchange’s current rules, a proposed rule change must be filed with the Securities and Exchange Commission (“SEC” or “Commission”) for the listing and trading of each new series of Active Proxy Portfolio Shares. The Exchange believes that it is

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

appropriate to codify certain rules within Rule 8.601-E that would generally eliminate the need for such proposed rule changes, which would create greater efficiency and promote uniform standards in the listing process.

The Commission has previously approved listing and trading on the Exchange of series of Active Proxy Portfolio Shares under NYSE Arca Rule 8.601-E.³ Currently, six series of Active Proxy Portfolio Shares are listed and traded on the Exchange--the American Century Mid Cap Growth Impact ETF and American Century Sustainable Equity ETF⁴; and 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.⁵

Background

Rule 8.601-E sets forth certain rules related to the listing and trading of Active

³ 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 Approval 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) (“American Century Approval Order”); 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) (“T. Rowe Price Approval Order”); 89438 (July 31, 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) (collectively, the “Approval Orders”). See also, Securities Exchange Act Release No. 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).

⁴ See American Century Approval Order, referenced in note 3, supra.

⁵ See T. Rowe Price Approval Order, referenced in note 3, supra

Proxy Portfolio Shares.⁶ Under Rule 8.601-E(c)(1), the term Active Proxy Portfolio Shares means a security that (a) is issued by an investment company registered under the Investment Company Act of 1940 (“1940 Act”) (“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) defines the term “Actual Portfolio” as 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) defines the term “Proxy Portfolio” as a specified portfolio of securities, other financial instruments and/or cash designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares as provided in the exemptive relief pursuant to the 1940 Act applicable to such series. The website for each series of Active Proxy Portfolio Shares shall disclose the information regarding the Proxy Portfolio as provided in the exemptive relief pursuant to the 1940 Act applicable to such series, including the following, to the extent applicable:

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

Key Features of Active Proxy Portfolio Shares

While funds issuing Active Proxy Portfolio Shares are actively-managed and, to that extent, are similar, for example, to Managed Fund Shares, which are actively-

⁶ See the Natixis Approval Order, note 3, supra, in which the Commission approved Exchange rules permitting the listing and trading of Active Proxy Portfolio Shares, and the listing and trading of shares of an individual series of Active Proxy Portfolio Shares.

managed funds listed and traded under NYSE Arca Rule 8.600-E,⁷ Active Proxy Portfolio Shares differ from Managed Fund Shares in the following important respects. First, in contrast to Managed Fund Shares and for which a “Disclosed Portfolio” is required to be disseminated at least once daily,⁸ the portfolio for an issue of Active Proxy Portfolio Shares is 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 1940 Act.⁹ The composition of the portfolio of an issue of Active Proxy Portfolio Shares is not available at commencement of

⁷ 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. 87434 (October 31, 2019), 84 FR 59849 (November 6, 2019) (SR-NYSEArca-2019-12) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of the iShares Commodity Curve Carry Strategy ETF under NYSE Arca Rule 8.600-E); 88924 (May 21, 2020), 85 FR 32062 (May 28, 2020) (SR-NYSEArca-2020--07) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of the SPDR SSGA Responsible Reserves ESG ETF under NYSE Arca Rule 8.600-E). 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).

⁸ 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.

⁹ A mutual fund is required to file with the Commission its complete portfolio schedules for the second and fourth fiscal quarters on Form N-CSR under the 1940 Act. Information reported on Form N-PORT for the third month of a fund’s fiscal quarter will be made publicly available 60 days after the end of a fund’s fiscal quarter. Form N-PORT requires reporting of a fund’s complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a series of Active Proxy Portfolio Shares’ Statement of Additional Information (“SAI”), its Shareholder Reports, its Form N-CSR, filed twice a year, and its Form N-CEN, filed annually. A series of Active Proxy Portfolio Shares’ SAI and Shareholder Reports will be available free upon request from the Investment Company, and those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed on-screen or downloaded from the Commission’s website at www.sec.gov.

Exchange listing and trading. Second, in connection with the creation and redemption of Active Proxy Portfolio Shares, such creation or redemption may be exchanged for a Proxy Portfolio with a value equal to the next-determined NAV. A series of Active Proxy Portfolio Shares discloses 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.

In addition, Rule 8.601-E (d) currently provides criteria that Active Proxy Portfolio Shares must satisfy for initial and continued listing on the Exchange, including, for example, that a minimum number of Active Proxy Portfolio Shares are required to be outstanding at the time of commencement of trading on the Exchange. However, the current process for listing and trading new series of Active Proxy Portfolio Shares on the Exchange requires that the Exchange submit a proposed rule change with the Commission. In this regard, Commentary .01 to Rule 8.601-E specifies that the Exchange will file separate proposals under Section 19(b) of the Act before listing and trading of shares of a series of Active Proxy Portfolio Shares.

Proposed Changes to Rule 8.601-E

The Exchange proposes to amend Commentary .01 to Rule 8.601-E to specify that the Exchange may approve Active Proxy Portfolio Shares for listing and/or trading (including pursuant to unlisted trading privileges) pursuant to SEC Rule 19b-4(e) under the Act, which pertains to derivative securities products (“SEC Rule 19b-4(e”).¹⁰ SEC Rule 19b-4(e)(1) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (“SRO”) is not deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4,¹¹ if the Commission has approved, pursuant to section 19(b) of the Act, the SRO’s trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the SRO has a surveillance program for the product class. This is the current method pursuant to which “passive” ETFs are listed under NYSE Arca Rule 5.2-E(j)(3), actively-managed ETFs are listed under NYSE Arca Rule 8.600-E, and Exchange-Traded Fund Shares are listed under NYSE Arca Rule 5.2-E(j)(8).

¹⁰ 17 CFR 240.19b-4(e). As provided under SEC Rule 19b-4(e), the term “new derivative securities product” means any type of option, warrant, hybrid securities product or any other security, other than a single equity option or a security futures product, whose value is based, in whole or in part, upon the performance of, or interest in, an underlying instrument.

¹¹ 17 CFR 240.19b-4(c)(1). As provided under SEC Rule 19b-4(c)(1), a stated policy, practice, or interpretation of the SRO shall be deemed to be a proposed rule change unless it is reasonably and fairly implied by an existing rule of the SRO.

The Exchange would also specify within Commentary .01 to Rule 8.601-E that components of a series of Active Proxy Portfolio Shares listed pursuant to Rule 19b-4(e) shall satisfy the criteria set forth in Rule 8.601-E upon initial listing and on a continual basis. The Exchange will file separate proposals under Section 19(b) of the Act before the listing and trading of a series of Active Proxy Portfolio Shares with components that do not satisfy the criteria set forth in proposed amended Commentary .01 or components other than those specified in amended Commentary .01. For example, if the components of a series of Active Proxy Portfolio Shares included a security or asset that is not specified in proposed amended Commentary .01, the Exchange would file a separate proposed rule change.

Proposed Commentary .01 (a) provides that the Actual Portfolio and Proxy Portfolio for a series of Active Proxy Portfolio Shares shall include only the following:

- (1) U.S. exchange-traded securities that are common stocks; preferred stocks; American Depositary Receipts; and real estate investment trusts;
- (2) Foreign common stocks that (1) are listed on a foreign exchange that is a member of the Intermarket Surveillance Group or with which the Exchange has in place a comprehensive surveillance sharing agreement; and (2) trade on such foreign exchange contemporaneously with shares of a series of Active Proxy Portfolio Shares in the Exchange's Core Trading Session;
- (3) U.S. exchange-traded funds that are listed under the following rules: Investment Company Units (Rule 5.2-E(j)(3)); Exchange-Traded Fund Shares (Rule 5.2-E(j)(8)); Portfolio Depositary Receipts (Rule 8.100-E); Managed Fund Shares (Rule 8.600-E); Active Proxy Portfolio Shares (Rule 8.601-E); and Managed Portfolio Shares (Rule 8.900-E);
- (4) Equity Gold Shares (Rule 5.2-E(j)(5))
- (5) Index-Linked Securities (Rule 5.2-E(j)(6));
- (6) Commodity-Based Trust Shares (Rule 8.201-E);
- (7) Currency Trust Shares (Rule 8.202-E);
- (8) the following securities, which are required to be organized as commodity pools: Commodity Index Trust Shares (Rule 8.203-E); Commodity Futures Trust Shares (Rule 8.204-E); Trust Units (Rule 8.500-E); and Managed Trust Securities (Rule 8.700-E);
- (9) the following securities if organized as commodity pools: Trust Issued Receipts (Rule 8.200-E) and Partnership Units (Rule 8.300-E);
- (10) U.S. exchange-traded futures that trade contemporaneously with shares of a series of Active Proxy Portfolio Shares in the Exchange's Core Trading Session; and
- (11) Cash and cash equivalents. Cash equivalents are the following: short-term U.S. Treasury securities, government money market funds, and repurchase agreements.

Proposed Commentary .01(b) provides that a series of Active Proxy Portfolio Shares will not hold short positions in securities and other financial instruments referenced in proposed Commentary .01(a)(1)-(11).

Proposed Commentary .01(c) provides that the securities referenced above in proposed Commentary .01(a)(3)-(9) shall include securities listed on another national securities exchange pursuant to substantially equivalent listing rules.

The securities and financial instruments enumerated in proposed Commentary .01 (a) to Rule 8.601-E are consistent with, and limited to, the “permissible investments” for series of Active Proxy Portfolio Shares previously approved by the Commission for Exchange listing and trading, as described in the Approval Orders.¹² Each such series has 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, and the Commission has issued orders under the 1940 Act granting the exemptions requested in such applications.¹³ Such applications made substantially identical representations specifying the instruments that a series of Active Proxy Portfolio Shares is permitted to hold, and a series of Active Proxy Portfolio Shares would be limited to such holdings on an initial and continued listing basis.¹⁴

¹² See note 3, *supra*.

¹³ See, e.g., Seventh Amended and Restated Application, filed by the Natixis ETF Trust II and NYSE Group, Inc., 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. 812-14870), dated October 21, 2019 (“Application”). On November 14, 2019, the Commission issued a notice regarding the Application. Investment Company Release No. 33684 (File No. 812-14870). 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. 33711 (December 10, 2019)).

¹⁴ For example, the Natixis Approval Order relating to listing of shares of the Natixis U.S. Equity Opportunities ETF (“Fund”) states: “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. and 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

The regulatory staff of the Exchange, or the Financial Industry Regulatory Authority, Inc. (“FINRA”), on behalf of the Exchange, will communicate as needed regarding trading in Active Proxy Portfolio Shares, other exchange-traded equity securities and futures contracts with other markets that are members of the Intermarket Surveillance Group (“ISG”), including U.S. and foreign exchanges on which the components are traded. In addition, the Exchange may obtain information regarding trading in Active Proxy Portfolio Shares from other markets that are members of the ISG, including all U.S. securities exchanges and futures exchanges on which the equity securities and futures contracts are traded, or with which the Exchange has in place a comprehensive surveillance sharing agreement.

With respect to the proposed amendment to Commentary .01(a)(11) relating to cash and cash equivalents, the enumerated cash equivalents--short-term U.S. Treasury securities, government money market funds, and repurchase agreements--also are included as cash equivalents for purposes of the generic listing criteria applicable to Managed Fund Shares in Commentary .01(c) to Rule 8.600-E. Such instruments are short-term, highly liquid, and of high credit quality, making them less susceptible than other asset classes both to price manipulation and volatility.¹⁵

The Exchange believes that the proposed standards would continue to ensure transparency surrounding the listing process for Active Proxy Portfolio Shares. In addition, the Exchange believes that the proposed portfolio standards for listing and trading Active Proxy Portfolio Shares are reasonably designed to promote a fair and orderly market for such Active Proxy Portfolio Shares. These proposed standards would also work in conjunction with the existing initial and continued listing criteria related to surveillance procedures and trading guidelines.

In support of this proposal, the Exchange represents that:

- (1) the Active Proxy Portfolio Shares will conform to the initial and continued listing criteria under Rule 8.601-E;

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 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.”

¹⁵ 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).

- (2) the Exchange's surveillance procedures are adequate to continue to properly monitor the trading of Active Proxy Portfolio Shares in all trading sessions and to deter and detect violations of Exchange rules. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which will include Active Proxy Portfolio Shares, to monitor trading in the Active Proxy Portfolio Shares;
- (3) the issuer of a series of Active Proxy Portfolio Shares will be required to comply with Rule 10A-3 under the Act for the initial and continued listing of Active Proxy Portfolio Shares, as provided under NYSE Arca Rule 5.3-E.

Prior to listing pursuant to proposed amended Commentary .01 to Rule 8.601-E, an issuer would be required to represent to the Exchange that it will notify the Exchange of any failure by a series of Active Proxy Portfolio Shares 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 series of Active Proxy Portfolio Shares is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5-E(m).

All Active Proxy Portfolio Shares listed and/or traded pursuant to Rule 8.601-E (including pursuant to unlisted trading privileges) are subject to all Exchange rules and procedures that currently govern the trading of equity securities on the Exchange.

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.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁷ in particular, because 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, in general, to protect investors and the public interest.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

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 because it would facilitate the listing and trading of additional Active Proxy Portfolio Shares, which would enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange believes that, in view of the Commission's approval of Exchange rules for Active Proxy Portfolio Shares and commencement of Exchange trading of shares of series of Active Proxy Portfolio Shares,¹⁸ it is appropriate to codify certain rules within Rule 8.601-E that would generally eliminate the need for separate proposed rule changes. The Exchange believes that this would facilitate the listing and trading of additional types of Active Proxy Portfolio Shares that have investment portfolios that are similar to investment portfolios for other exchange-traded funds that have been approved for listing and trading, thereby creating greater efficiencies in the listing process for the Exchange and the Commission.

The securities and financial instruments enumerated in proposed Commentary .01 (a)(1)-(11) to Rule 8.601-E are consistent with, and limited to, the "permissible investments" for series of Active Proxy Portfolio Shares previously approved by the Commission for Exchange listing and trading, as described in the Approval Orders.¹⁹ The Exchange notes that all exchange-traded equity securities held by a series of Active Proxy Portfolio Shares would either be listed and traded on a national securities exchange in the United States or, with respect to foreign common stocks, traded on a foreign exchange that is a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, such foreign common stocks would be required to trade on such foreign exchange contemporaneously with shares of a series of Active Proxy Portfolio Shares in the Exchange's Core Trading Session (as defined in NYSE Arca Rule 7.34-E). Futures contracts held by a series of Active Proxy Portfolio Shares would be traded on a U.S. futures exchange.

With respect to the proposed amendment to Commentary .01(a)(11) relating to cash and cash equivalents, the enumerated cash equivalents--short-term U.S. Treasury securities, government money market funds, and repurchase agreements--also are included as cash equivalents for purposes of the generic listing criteria applicable to Managed Fund Shares in Commentary .01(c) to Rule 8.600-E. Such instruments are short-term, highly liquid, and of high credit quality, making them less susceptible than other asset classes both to price manipulation and volatility.²⁰

¹⁸ See notes 3-5, supra.

¹⁹ See notes 3 and 14, supra.

²⁰ See note 15, supra.

As noted above, NYSE Arca Rule 8.601-E(c)(3) requires 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 specified information, to the extent applicable.

Quotation and last sale information for U.S. exchange-traded equity securities in the applicable Proxy Portfolio will be available via the Consolidated Tape Association high-speed line or from the exchange on which such securities trade. Price information for foreign common stocks in the applicable Proxy Portfolio will be available from the exchange on which such securities trade or from market data vendors. Intraday pricing information for cash equivalents will be available through subscription services and/or pricing services. Quotation and other market information relating to futures contracts is available from the U.S. futures exchanges listing such instruments as well as from market data vendors.

The proposed rule change is also designed to protect investors and the public interest because Active Proxy Portfolio Shares listed and traded pursuant to Rule 8.601-E, including pursuant to the proposed portfolio standards, would continue to be subject to the full panoply of Exchange rules and procedures that currently govern the trading of equity securities on the Exchange.

The Exchange believes that the proposed standards would continue to ensure transparency surrounding the listing process for Active Proxy Portfolio Shares. In addition, the Exchange believes that the proposed portfolio standards for listing and trading Active Proxy Portfolio Shares are reasonably designed to promote a fair and orderly market for such Active Proxy Portfolio Shares. These proposed standards would also work in conjunction with the existing initial and continued listing criteria related to surveillance procedures and trading guidelines.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because the Active Proxy Portfolio Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Rule 8.601-E. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in Active Proxy Portfolio Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, will communicate as needed regarding trading in Active Proxy Portfolio Shares, other exchange-traded equity securities, and futures contracts with other markets that are members of the ISG, including all U.S. and foreign exchanges on which the components are traded. In addition, the Exchange may obtain information regarding trading in Active Proxy Portfolio Shares from other markets that are members of the ISG, including all U.S. securities exchanges and futures exchanges on which the equity securities and futures contracts are traded, or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Exchange also believes that the proposed rule change would fulfill the intended objective of Rule 19b-4(e) under the Act by allowing Active Proxy Portfolio Shares that satisfy the proposed listing standards to be listed and traded without separate Commission approval. However, as proposed, the Exchange would continue to file separate proposed rule changes before the listing and trading of Active Proxy Portfolio Shares that do not satisfy the additional criteria described above.

Prior to listing pursuant to proposed amended Commentary .01 to Rule 8.601-E, an issuer would be required to represent to the Exchange that it will advise the Exchange of any failure by a series of Active Proxy Portfolio Shares 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 series of Active Proxy Portfolio Shares is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5-E(m).

For these reasons, the Exchange believes that the proposal is consistent with the Act.

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

In accordance with Section 6(b)(8) of the Act,²¹ 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. Instead, the Exchange believes that the proposed rule change would facilitate the listing and trading of additional types of Active Proxy Portfolio Shares and result in a significantly more efficient process surrounding the listing and trading of Active Proxy Portfolio Shares, which will enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange believes that this would reduce the time frame for bringing Active Proxy Portfolio Shares to market, thereby reducing the burdens on issuers and other market participants and promoting competition. In turn, the Exchange believes that the proposed change would make the process for listing Active Proxy Portfolio Shares more competitive by applying uniform listing standards with respect to Active Proxy Portfolio Shares.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

²¹ 15 U.S.C. 78f(b)(8).

6. Extension of Time Period for Commission Action

The Exchange does not consent at this time to an extension of the time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Publication in the Federal Register

Exhibit 5 – Text of the Proposed Rule Change

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

[Date]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to Amend NYSE Arca Rule 8.601-E to Adopt Generic Listing Standards for Active Proxy Portfolio Shares.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on August 31, 2020, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend NYSE Arca Rule 8.601-E to adopt generic listing standards for Active Proxy Portfolio Shares. 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.

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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Rule 8.601-E to adopt generic listing standards for Active Proxy Portfolio Shares. Under the Exchange’s current rules, a proposed rule change must be filed with the Securities and Exchange Commission (“SEC” or “Commission”) for the listing and trading of each new series of Active Proxy Portfolio Shares. The Exchange believes that it is appropriate to codify certain rules within Rule 8.601-E that would generally eliminate the need for such proposed rule changes, which would create greater efficiency and promote uniform standards in the listing process.

The Commission has previously approved listing and trading on the Exchange of series of Active Proxy Portfolio Shares under NYSE Arca Rule 8.601-E.⁴ Currently, six

⁴ 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 Approval 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

series of Active Proxy Portfolio Shares are listed and traded on the Exchange--the American Century Mid Cap Growth Impact ETF and American Century Sustainable Equity ETF⁵; and 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.⁶

Background

Rule 8.601-E sets forth certain rules related to the listing and trading of Active Proxy Portfolio Shares.⁷ Under Rule 8.601-E(c)(1), the term Active Proxy Portfolio Shares means a security that (a) is issued by an investment company registered under the Investment Company Act of 1940 (“1940 Act”) (“Investment Company”) organized as an open-end management investment company that invests in a portfolio of securities

Portfolio Shares Issued by the American Century ETF Trust under NYSE Arca Rule 8.601-E) (“American Century Approval Order”); 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) (“T. Rowe Price Approval Order”); 89438 (July 31, 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) (collectively, the “Approval Orders”). See also, Securities Exchange Act Release No. 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).

⁵ See American Century Approval Order, referenced in note 4, supra.

⁶ See T. Rowe Price Approval Order, referenced in note 4, supra

⁷ See the Natixis Approval Order, note 4, supra, in which the Commission approved Exchange rules permitting the listing and trading of Active Proxy Portfolio Shares, and the listing and trading of shares of an individual series of Active Proxy Portfolio Shares.

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) defines the term "Actual Portfolio" as 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) defines the term "Proxy Portfolio" as a specified portfolio of securities, other financial instruments and/or cash designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares as provided in the exemptive relief pursuant to the 1940 Act applicable to such series. The website for each series of Active Proxy Portfolio Shares shall disclose the information regarding the Proxy Portfolio as provided in the exemptive relief pursuant to the 1940 Act applicable to such series, including the following, to the extent applicable:

- (i) Ticker symbol;
- (ii) CUSIP or other identifier;
- (iii) Description of holding;
- (iv) Quantity of each security or other asset held; and

(v) Percentage weighting of the holding in the portfolio.

Key Features of Active Proxy Portfolio Shares

While funds issuing Active Proxy Portfolio Shares are actively-managed and, to that extent, are similar, for example, to Managed Fund Shares, which are actively-managed funds listed and traded under NYSE Arca Rule 8.600-E,⁸ Active Proxy Portfolio Shares differ from Managed Fund Shares in the following important respects. First, in contrast to Managed Fund Shares and for which a “Disclosed Portfolio” is required to be disseminated at least once daily,⁹ the portfolio for an issue of Active Proxy Portfolio Shares is publicly disclosed within at least 60 days following the end of every fiscal quarter in accordance with normal disclosure requirements otherwise applicable to

⁸ 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. 87434 (October 31, 2019), 84 FR 59849 (November 6, 2019) (SR-NYSEArca-2019-12) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of the iShares Commodity Curve Carry Strategy ETF under NYSE Arca Rule 8.600-E); 88924 (May 21, 2020), 85 FR 32062 (May 28, 2020) (SR-NYSEArca-2020--07) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of the SPDR SSGA Responsible Reserves ESG ETF under NYSE Arca Rule 8.600-E). 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).

⁹ 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.

open-end management investment companies registered under the 1940 Act.¹⁰ The composition of the portfolio of an issue of Active Proxy Portfolio Shares is not available at commencement of Exchange listing and trading. Second, in connection with the creation and redemption of Active Proxy Portfolio Shares, such creation or redemption may be exchanged for a Proxy Portfolio with a value equal to the next-determined NAV. A series of Active Proxy Portfolio Shares discloses 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.

In addition, Rule 8.601-E (d) currently provides criteria that Active Proxy Portfolio Shares must satisfy for initial and continued listing on the Exchange, including, for example, that a minimum number of Active Proxy Portfolio Shares are required to be outstanding at the time of commencement of trading on the Exchange. However, the current process for listing and trading new series of Active Proxy Portfolio Shares on the Exchange requires that the Exchange submit a proposed rule change with the Commission. In this regard, Commentary .01 to Rule 8.601-E specifies that the

¹⁰ A mutual fund is required to file with the Commission its complete portfolio schedules for the second and fourth fiscal quarters on Form N-CSR under the 1940 Act. Information reported on Form N-PORT for the third month of a fund's fiscal quarter will be made publicly available 60 days after the end of a fund's fiscal quarter. Form N-PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a series of Active Proxy Portfolio Shares' Statement of Additional Information ("SAI"), its Shareholder Reports, its Form N-CSR, filed twice a year, and its Form N-CEN, filed annually. A series of Active Proxy Portfolio Shares' SAI and Shareholder Reports will be available free upon request from the Investment Company, and those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed on-screen or downloaded from the Commission's website at www.sec.gov.

Exchange will file separate proposals under Section 19(b) of the Act before listing and trading of shares of a series of Active Proxy Portfolio Shares.

Proposed Changes to Rule 8.601-E

The Exchange proposes to amend Commentary .01 to Rule 8.601-E to specify that the Exchange may approve Active Proxy Portfolio Shares for listing and/or trading (including pursuant to unlisted trading privileges) pursuant to SEC Rule 19b-4(e) under the Act, which pertains to derivative securities products (“SEC Rule 19b-4(e”).¹¹ SEC Rule 19b-4(e)(1) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (“SRO”) is not deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4,¹² if the Commission has approved, pursuant to section 19(b) of the Act, the SRO’s trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the SRO has a surveillance program for the product class. This is the current method pursuant to which “passive” ETFs are listed under NYSE Arca Rule 5.2-E(j)(3), actively-managed ETFs are listed under NYSE Arca Rule 8.600-E, and Exchange-Traded Fund Shares are listed under NYSE Arca Rule 5.2-E(j)(8).

The Exchange would also specify within Commentary .01 to Rule 8.601-E that components of a series of Active Proxy Portfolio Shares listed pursuant to Rule 19b-4(e)

¹¹ 17 CFR 240.19b-4(e). As provided under SEC Rule 19b-4(e), the term “new derivative securities product” means any type of option, warrant, hybrid securities product or any other security, other than a single equity option or a security futures product, whose value is based, in whole or in part, upon the performance of, or interest in, an underlying instrument.

¹² 17 CFR 240.19b-4(c)(1). As provided under SEC Rule 19b-4(c)(1), a stated policy, practice, or interpretation of the SRO shall be deemed to be a proposed rule change unless it is reasonably and fairly implied by an existing rule of the SRO.

shall satisfy the criteria set forth in Rule 8.601-E upon initial listing and on a continual basis. The Exchange will file separate proposals under Section 19(b) of the Act before the listing and trading of a series of Active Proxy Portfolio Shares with components that do not satisfy the criteria set forth in proposed amended Commentary .01 or components other than those specified in amended Commentary .01. For example, if the components of a series of Active Proxy Portfolio Shares included a security or asset that is not specified in proposed amended Commentary .01, the Exchange would file a separate proposed rule change.

Proposed Commentary .01 (a) provides that the Actual Portfolio and Proxy Portfolio for a series of Active Proxy Portfolio Shares shall include only the following:

- (1) U.S. exchange-traded securities that are common stocks; preferred stocks; American Depositary Receipts; and real estate investment trusts;
- (2) Foreign common stocks that (1) are listed on a foreign exchange that is a member of the Intermarket Surveillance Group or with which the Exchange has in place a comprehensive surveillance sharing agreement; and (2) trade on such foreign exchange contemporaneously with shares of a series of Active Proxy Portfolio Shares in the Exchange's Core Trading Session;
- (3) U.S. exchange-traded funds that are listed under the following rules: Investment Company Units (Rule 5.2-E(j)(3)); Exchange-Traded Fund Shares (Rule 5.2-E(j)(8)); Portfolio Depositary Receipts (Rule 8.100-E); Managed Fund Shares (Rule 8.600-E); Active Proxy Portfolio Shares (Rule 8.601-E); and Managed Portfolio Shares (Rule 8.900-E);
- (4) Equity Gold Shares (Rule 5.2-E(j)(5))

- (5) Index-Linked Securities (Rule 5.2-E(j)(6));
- (6) Commodity-Based Trust Shares (Rule 8.201-E);
- (7) Currency Trust Shares (Rule 8.202-E);
- (8) the following securities, which are required to be organized as commodity pools:
 - Commodity Index Trust Shares (Rule 8.203-E); Commodity Futures Trust Shares (Rule 8.204-E); Trust Units (Rule 8.500-E); and Managed Trust Securities (Rule 8.700-E);
- (9) the following securities if organized as commodity pools: Trust Issued Receipts (Rule 8.200-E) and Partnership Units (Rule 8.300-E);
- (10) U.S. exchange-traded futures that trade contemporaneously with shares of a series of Active Proxy Portfolio Shares in the Exchange's Core Trading Session; and
- (11) Cash and cash equivalents. Cash equivalents are the following: short-term U.S. Treasury securities, government money market funds, and repurchase agreements.

Proposed Commentary .01(b) provides that a series of Active Proxy Portfolio Shares will not hold short positions in securities and other financial instruments referenced in proposed Commentary .01(a)(1)-(11).

Proposed Commentary .01(c) provides that the securities referenced above in proposed Commentary .01(a)(3)-(9) shall include securities listed on another national securities exchange pursuant to substantially equivalent listing rules.

The securities and financial instruments enumerated in proposed Commentary .01(a) to Rule 8.601-E are consistent with, and limited to, the "permissible investments" for

series of Active Proxy Portfolio Shares previously approved by the Commission for Exchange listing and trading, as described in the Approval Orders.¹³ Each such series has 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, and the Commission has issued orders under the 1940 Act granting the exemptions requested in such applications.¹⁴ Such applications made substantially identical representations specifying the instruments that a series of Active Proxy Portfolio Shares is permitted to hold, and a series of Active Proxy Portfolio Shares would be limited to such holdings on an initial and continued listing basis.¹⁵

¹³ See note 4, *supra*.

¹⁴ See, e.g., Seventh Amended and Restated Application, filed by the Natixis ETF Trust II and NYSE Group, Inc., 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. 812-14870), dated October 21, 2019 (“Application”). On November 14, 2019, the Commission issued a notice regarding the Application. Investment Company Release No. 33684 (File No. 812-14870). 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. 33711 (December 10, 2019)).

¹⁵ For example, the Natixis Approval Order relating to listing of shares of the Natixis U.S. Equity Opportunities ETF (“Fund”) states: “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. and 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

The regulatory staff of the Exchange, or the Financial Industry Regulatory Authority, Inc. (“FINRA”), on behalf of the Exchange, will communicate as needed regarding trading in Active Proxy Portfolio Shares, other exchange-traded equity securities and futures contracts with other markets that are members of the Intermarket Surveillance Group (“ISG”), including U.S. and foreign exchanges on which the components are traded. In addition, the Exchange may obtain information regarding trading in Active Proxy Portfolio Shares from other markets that are members of the ISG, including all U.S. securities exchanges and futures exchanges on which the equity securities and futures contracts are traded, or with which the Exchange has in place a comprehensive surveillance sharing agreement.

With respect to the proposed amendment to Commentary .01(a)(11) relating to cash and cash equivalents, the enumerated cash equivalents--short-term U.S. Treasury securities, government money market funds, and repurchase agreements--also are included as cash equivalents for purposes of the generic listing criteria applicable to Managed Fund Shares in Commentary .01(c) to Rule 8.600-E. Such instruments are short-term, highly liquid, and of high credit quality, making them less susceptible than other asset classes both to price manipulation and volatility.¹⁶

The Exchange believes that the proposed standards would continue to ensure

Application and Exemptive Order, the Fund will not hold short positions or invest in 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 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).

transparency surrounding the listing process for Active Proxy Portfolio Shares. In addition, the Exchange believes that the proposed portfolio standards for listing and trading Active Proxy Portfolio Shares are reasonably designed to promote a fair and orderly market for such Active Proxy Portfolio Shares. These proposed standards would also work in conjunction with the existing initial and continued listing criteria related to surveillance procedures and trading guidelines.

In support of this proposal, the Exchange represents that:

- (1) the Active Proxy Portfolio Shares will conform to the initial and continued listing criteria under Rule 8.601-E;
- (2) the Exchange's surveillance procedures are adequate to continue to properly monitor the trading of Active Proxy Portfolio Shares in all trading sessions and to deter and detect violations of Exchange rules. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which will include Active Proxy Portfolio Shares, to monitor trading in the Active Proxy Portfolio Shares;
- (3) the issuer of a series of Active Proxy Portfolio Shares will be required to comply with Rule 10A-3 under the Act for the initial and continued listing of Active Proxy Portfolio Shares, as provided under NYSE Arca Rule 5.3-E.

Prior to listing pursuant to proposed amended Commentary .01 to Rule 8.601-E, an issuer would be required to represent to the Exchange that it will notify the Exchange of any failure by a series of Active Proxy Portfolio Shares 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 series of Active Proxy Portfolio Shares is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5-E(m).

All Active Proxy Portfolio Shares listed and/or traded pursuant to Rule 8.601-E (including pursuant to unlisted trading privileges) are subject to all Exchange rules and procedures that currently govern the trading of equity securities on the Exchange.

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,¹⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁸ in particular, because 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, in general, to protect investors and the public interest.

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 because it would facilitate the listing and trading of additional Active Proxy Portfolio Shares, which would

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange believes that, in view of the Commission's approval of Exchange rules for Active Proxy Portfolio Shares and commencement of Exchange trading of shares of series of Active Proxy Portfolio Shares,¹⁹ it is appropriate to codify certain rules within Rule 8.601-E that would generally eliminate the need for separate proposed rule changes. The Exchange believes that this would facilitate the listing and trading of additional types of Active Proxy Portfolio Shares that have investment portfolios that are similar to investment portfolios for other exchange-traded funds that have been approved for listing and trading, thereby creating greater efficiencies in the listing process for the Exchange and the Commission.

The securities and financial instruments enumerated in proposed Commentary .01 (a)(1)-(11) to Rule 8.601-E are consistent with, and limited to, the "permissible investments" for series of Active Proxy Portfolio Shares previously approved by the Commission for Exchange listing and trading, as described in the Approval Orders.²⁰ The Exchange notes that all exchange-traded equity securities held by a series of Active Proxy Portfolio Shares would either be listed and traded on a national securities exchange in the United States or, with respect to foreign common stocks, traded on a foreign exchange that is a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, such foreign common stocks would be required to trade on such foreign exchange contemporaneously with shares of a series of Active Proxy Portfolio Shares in the Exchange's Core Trading Session (as

¹⁹ See notes 4-6, supra.

²⁰ See notes 4 and 15, supra.

defined in NYSE Arca Rule 7.34-E). Futures contracts held by a series of Active Proxy Portfolio Shares would be traded on a U.S. futures exchange.

With respect to the proposed amendment to Commentary .01(a)(11) relating to cash and cash equivalents, the enumerated cash equivalents--short-term U.S. Treasury securities, government money market funds, and repurchase agreements--also are included as cash equivalents for purposes of the generic listing criteria applicable to Managed Fund Shares in Commentary .01(c) to Rule 8.600-E. Such instruments are short-term, highly liquid, and of high credit quality, making them less susceptible than other asset classes both to price manipulation and volatility.²¹

As noted above, NYSE Arca Rule 8.601-E(c)(3) requires 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 specified information, to the extent applicable.

Quotation and last sale information for U.S. exchange-traded equity securities in the applicable Proxy Portfolio will be available via the Consolidated Tape Association high-speed line or from the exchange on which such securities trade. Price information for foreign common stocks in the applicable Proxy Portfolio will be available from the exchange on which such securities trade or from market data vendors. Intraday pricing information for cash equivalents will be available through subscription services and/or pricing services. Quotation and other market information relating to futures contracts is available from the U.S. futures exchanges listing such instruments as well as from market data vendors.

²¹ See note 16, supra.

The proposed rule change is also designed to protect investors and the public interest because Active Proxy Portfolio Shares listed and traded pursuant to Rule 8.601-E, including pursuant to the proposed portfolio standards, would continue to be subject to the full panoply of Exchange rules and procedures that currently govern the trading of equity securities on the Exchange.

The Exchange believes that the proposed standards would continue to ensure transparency surrounding the listing process for Active Proxy Portfolio Shares. In addition, the Exchange believes that the proposed portfolio standards for listing and trading Active Proxy Portfolio Shares are reasonably designed to promote a fair and orderly market for such Active Proxy Portfolio Shares. These proposed standards would also work in conjunction with the existing initial and continued listing criteria related to surveillance procedures and trading guidelines.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because the Active Proxy Portfolio Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Rule 8.601-E. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in Active Proxy Portfolio Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, will communicate as needed regarding trading in Active Proxy Portfolio Shares, other exchange-traded equity securities, and futures contracts with other markets that are members of the ISG, including all U.S. and foreign exchanges on which the components are traded. In addition, the Exchange may obtain information regarding

trading in Active Proxy Portfolio Shares from other markets that are members of the ISG, including all U.S. securities exchanges and futures exchanges on which the equity securities and futures contracts are traded, or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Exchange also believes that the proposed rule change would fulfill the intended objective of Rule 19b-4(e) under the Act by allowing Active Proxy Portfolio Shares that satisfy the proposed listing standards to be listed and traded without separate Commission approval. However, as proposed, the Exchange would continue to file separate proposed rule changes before the listing and trading of Active Proxy Portfolio Shares that do not satisfy the additional criteria described above.

Prior to listing pursuant to proposed amended Commentary .01 to Rule 8.601-E, an issuer would be required to represent to the Exchange that it will advise the Exchange of any failure by a series of Active Proxy Portfolio Shares 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 series of Active Proxy Portfolio Shares is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5-E(m).

For these reasons, the Exchange believes that the proposal is consistent with the Act.

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

In accordance with Section 6(b)(8) of the Act,²² the Exchange does not believe

²² 15 U.S.C. 78f(b)(8).

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. Instead, the Exchange believes that the proposed rule change would facilitate the listing and trading of additional types of Active Proxy Portfolio Shares and result in a significantly more efficient process surrounding the listing and trading of Active Proxy Portfolio Shares, which will enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange believes that this would reduce the time frame for bringing Active Proxy Portfolio Shares to market, thereby reducing the burdens on issuers and other market participants and promoting competition. In turn, the Exchange believes that the proposed change would make the process for listing Active Proxy Portfolio Shares more competitive by applying uniform listing standards with respect to Active Proxy Portfolio Shares.

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

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

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

Within 45 days of the date of publication of this notice in the Federal Register or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or

- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEARCA-2020-77 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEARCA-2020-77. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for

website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEARCA-2020-77 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Eduardo A. Aleman
Deputy Secretary

²³ 17 CFR 200.30-3(a)(12).

Underlining indicates new text;
[brackets] indicate deletions.

Text of the Proposed Rule Change

Rules of the NYSE Arca, Inc.

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Rule 8-E

Trading of Certain Equity Derivatives

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Rule 8.601-E. Active Proxy Portfolio Shares

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Commentary:

.01 [The Exchange will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before the listing and trading of a series of Active Proxy Portfolio Shares.] The Exchange may approve Active Proxy Portfolio Shares for listing and/or trading (including pursuant to unlisted trading privileges) pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934. Components of a series of Active Proxy Portfolio Shares listed pursuant to Rule 19b-4(e) shall satisfy the criteria set forth in this Rule 8.601-E upon initial listing and on a continual basis. The Exchange will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before the listing and trading of a series of Active Proxy Portfolio Shares with components that do not satisfy the criteria set forth in this Commentary .01 or components other than those specified below. All statements or representations contained in such rule filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements.

- (a) The Actual Portfolio and Proxy Portfolio for a series of Active Proxy Portfolio Shares shall include only the following components:

- (1) U.S. exchange-traded securities that are common stocks; preferred stocks; American Depositary Receipts; and real estate investment trusts;
 - (2) Foreign common stocks that (1) are listed on a foreign exchange that is a member of the Intermarket Surveillance Group or with which the Exchange has in place a comprehensive surveillance sharing agreement; and (2) trade on such foreign exchange contemporaneously with shares of a series of Active Proxy Portfolio Shares in the Exchange's Core Trading Session;
 - (3) U.S. exchange-traded funds that are listed under the following rules: Investment Company Units (Rule 5.2-E(j)(3)); Exchange-Traded Fund Shares (Rule 5.2-E(j)(8)); Portfolio Depositary Receipts (Rule 8.100-E); Managed Fund Shares (Rule 8.600-E); Active Proxy Portfolio Shares (Rule 8.601-E); and Managed Portfolio Shares (Rule 8.900-E);
 - (4) Equity Gold Shares (Rule 5.2-E(j)(5));
 - (5) Index-Linked Securities (Rule 5.2-E(j)(6));
 - (6) Commodity-Based Trust Shares (Rule 8.201-E);
 - (7) Currency Trust Shares (Rule 8.202-E);
 - (8) the following securities, which are required to be organized as commodity pools: Commodity Index Trust Shares (Rule 8.203-E); Commodity Futures Trust Shares (Rule 8.204-E); Trust Units (Rule 8.500-E); and Managed Trust Securities (Rule 8.700-E);
 - (9) the following securities if organized as commodity pools: Trust Issued Receipts (Rule 8.200-E) and Partnership Units (Rule 8.300-E);
 - (10) U.S. exchange-traded futures that trade contemporaneously with shares of a series of Active Proxy Portfolio Shares in the Exchange's Core Trading Session; and
 - (11) Cash and cash equivalents. Cash equivalents are the following: short-term U.S. Treasury securities, government money market funds, and repurchase agreements.
- (b) A series of Active Proxy Portfolio Shares will not hold short positions in securities and other financial instruments referenced in Commentary .01(a)(1)-(11) above.
- (c) The securities referenced in Commentary .01(a)(3)-(9) above shall include securities listed on another national securities exchange pursuant to substantially equivalent listing rules.

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