

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 18		SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No. * SR 2025 - * 28 Amendment No. (req. for Amendments *)	
Filing by NYSE Arca, Inc. Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934					
Initial * <input checked="" type="checkbox"/>		Amendment * <input type="checkbox"/>		Withdrawal <input type="checkbox"/>	
Section 19(b)(2) * <input type="checkbox"/>		Section 19(b)(3)(A) * <input checked="" type="checkbox"/>		Section 19(b)(3)(B) * <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 checked="" 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"/>			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>		
Exhibit 2 Sent As Paper Document <input type="checkbox"/>			Exhibit 3 Sent As Paper Document <input type="checkbox"/>		
<b>Description</b> Provide a brief description of the action (limit 250 characters, required when Initial is checked *). <div>Proposal to reflect an amendment to the Application and Exemptive Order governing the Fidelity Womens Leadership ETF and Fidelity Sustainability U.S. Equity ETF</div>					
<b>Contact Information</b> 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 * David Last Name * De Gregorio Title * Associate General Counsel, NYSE Group Inc. E-mail * David.DeGregorio@ice.com Telephone * (212) 656-4166 Fax (212) 656-8101					
<b>Signature</b> Pursuant to the requirements of the Securities Exchange of 1934, NYSE Arca, Inc. has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized. Date 04/04/2025 (Title *) By Martha Redding Corporate Secretary (Name *) <div>NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed. Martha Redding Digitally signed by Martha Redding Date: 2025.04.04 16:45:08 -04'00'</div>					

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SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

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19b-4 - Fidelity ETF Exempt Order Ch

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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Ex. 1 Fidelity ETF Exempt Order Char

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 Advanced 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 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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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.

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Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

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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.

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Exhibit Sent As Paper Document

**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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) proposes to reflect an amendment to the Application and Exemptive Order governing the Fidelity Women’s Leadership ETF and Fidelity Sustainability U.S. Equity ETF that are listed and traded on the Exchange under NYSE Arca Rule 8.601-E.

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

- (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

The proposed rule change is being submitted to the Securities and Exchange Commission (the “Commission”) by Exchange staff pursuant to authority delegated to it by the NYSE Arca Board of Directors.

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

David De Gregorio  
Associate General Counsel  
NYSE Group, Inc.  
(212) 656-4166

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

- (a) Purpose

The Exchange 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.<sup>3</sup> Commentary .01 to Rule

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 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

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. Pursuant to this provision, the Exchange submitted a proposal to list and trade shares (“Shares”) of Active Proxy Portfolio Shares of the Fidelity Women’s Leadership ETF and Fidelity Sustainability U.S. Equity ETF<sup>4</sup> (each, a “Fund” and, together, the “Funds”) on the Exchange under NYSE Arca Rule 8.601-E. The Exchange proposes to reflect an amendment to the Prior Application and Prior Exemptive Order (as defined below) governing the listing and trading of the Funds, as follows.

Fidelity Covington Trust, Fidelity Management & Research Company LLC, and Fidelity Distributors Company LLC (the “Applicants”)<sup>5</sup> filed an amended and restated application for an order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (the “Prior Application”).<sup>6</sup> On December 10, 2019, the Commission issued an order,

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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 openend 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 or Custom Basket, as applicable, 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 or Custom Basket, as applicable, 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.”

<sup>4</sup> On April 14, 2021, the Commission published the notice of filing and immediate effectiveness relating to the listing and trading of shares of the Fidelity Women’s Leadership ETF and Fidelity Sustainability U.S. Equity ETF. *See* Securities Exchange Act Release No. 91514 (April 8, 2021), 86 FR 19657 (April 14, 2021) (SR-NYSEArca-2021-23) (“Notice”).

<sup>5</sup> The original applicants were Fidelity Beach Street Trust, Fidelity Management & Research Company, FMR Co., Inc., and Fidelity Distributors Corporation. On January 1, 2020, each of FMR Co., Inc. and certain other Fidelity investment adviser entities merged with and into Fidelity Management & Research Company. Thereafter, Fidelity Management & Research Company redomiciled as a Delaware limited liability company and was renamed Fidelity Management & Research Company LLC. FMR Co., Inc. no longer exists and is thus no longer an applicant. On January 1, 2020, Fidelity Distributors Corporation merged with and into Fidelity Investments Institutional Services Company, Inc. (“FIISC”). FIISC thereafter redomiciled as a Delaware limited liability company and was renamed Fidelity Distributors Company LLC. Fidelity Distributors Corporation also no longer exists and is no longer an applicant. Finally, the Funds have since been registered with the Commission as series of Fidelity Covington Trust. Fidelity Beach Street Trust has agreed to be removed as an applicant from the Application.

<sup>6</sup> *See* File No. 812-14364, dated November 8, 2019.

as subsequently amended on August 5, 2021 (the “Prior Exemptive Order”), under the 1940 Act granting the exemptions requested in the Prior Application.<sup>7</sup> The Prior Application and Prior Exemptive Order are applicable to the Funds.

Under the Prior Exemptive Order, the Funds are required to daily publish a basket of securities and cash that, while different from the Fund’s portfolio, is designed to closely track its daily performance (“Tracking Basket”). Further, under the Prior Exemptive Order, a Fund is permitted to invest only in certain enumerated instruments (“Prior Order Investments”).<sup>8</sup> As set forth in the Notice, investments made by the Fidelity Women’s Leadership ETF and Fidelity Sustainability U.S. Equity ETF will comply with the conditions set forth in the Prior Exemptive Order.<sup>9</sup>

On July 30, 2024, as amended on November 22, 2024, January 16, 2025 and February 24, 2025, the Applicants sought to amend the Prior Exemptive Order (the “Updated Application”) to permit a Fund to invest in securities and instruments in addition to Prior Order Investments, including but not limited to fixed income securities, foreign investments that do not trade contemporaneously with Shares, and derivatives (“Amended Order Investments”).<sup>10</sup> As proposed, each Fund’s portfolio would be invested in two sleeves. A Fund will invest the first sleeve solely in Prior Order investments for which the Fund will disclose a Tracking Basket designed to track closely the daily performance of the sleeve (the “Semi-Transparent Sleeve”). A Fund will invest the second sleeve solely in Amended Order Investments and will publicly disclose all such investments daily

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<sup>7</sup> See Investment Company Act Release No. 33712 (December 10, 2019); Investment Company Act Release No. 34350 (August 5, 2021).

<sup>8</sup> Pursuant to the Prior Application and Prior Exemptive Order, the permissible investments for the Funds include only the following instruments: ETFs, exchange-traded notes, exchange-traded common stocks, common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Shares (“foreign common stocks”), exchange-traded preferred stocks, exchange-traded American Depositary Receipts, exchange-traded real estate investment trusts, exchange-traded commodity pools, exchange-traded metals trusts, exchange-traded currency trusts, and exchange-traded futures that trade contemporaneously with the Shares, as well as cash and cash equivalents, i.e., short-term U.S. Treasury securities, government money market funds, and repurchase agreements. With the exception of foreign common stocks and cash and cash equivalents, all holdings of the Funds will be listed on a U.S. national securities exchange. The Funds will not short positions, will not borrow for investment purposes, and will not purchase any securities that are illiquid investments at the time of purchase. See Notice, 86 FR at 19659, n. 12.

<sup>9</sup> See Notice, 86 FR at 19659, n. 12 & 13.

<sup>10</sup> See File No. 812-15606, dated February 24, 2025. The Funds sought the same investment flexibility to choose its investments as ETFs relying on Rule 6c-11 under the Act (“Rule 6c-11”) subject to the same portfolio holdings disclosure requirements as Rule 6c-11 ETFs with respect to Amended Order Investments. See *id.* The Funds are not able to operate in reliance on Rule 6c-11 under the Amended Order because they do not and will not disclose all of their portfolio holdings daily as required by the rule. See *id.*, n.7. See also Rule 6c-11(c)(1)(i) (requiring an ETF to disclose prominently on its website, publicly available and free of charge, the portfolio holdings that will form the basis for the Fund’s calculation of per share NAV).

in accordance with the requirements of rule 6c-11(c) under the 1940 Act (the “Fully-Transparent Sleeve”). Applicants represented that the Funds do not intend to use Amended Order Investments to hedge or otherwise offset exposure to Prior Order Investments.<sup>11</sup>

On March 31, 2025, the Commission issued an amended exemptive order (the “Amended Exemptive Order”) that, among other things, requires each Fund, to the extent it invests in Amended Order Investments, to publish a new Tracking Basket that consists of two distinct portions: (1) a first portion corresponding to the Semi-Transparent Sleeve; and (2) a second portion corresponding to the Fully-Transparent Sleeve that fully discloses all Amended Order Investments in a manner consistent with Rule 6c-11(c)(1). Under the Amended Exemptive Order, the ratio of the Fully-Transparent Sleeve portion of the Tracking Basket to the total Tracking Basket will correspond to the ratio of the Amended Order Investments to the ETF’s aggregate portfolio holdings. The ratio of the Semi-Transparent portion of the Tracking Basket to the total Tracking Basket will correspond to the ratio of all investments other than Amended Order Investments to the ETF’s aggregate portfolio holdings.<sup>12</sup> All Amended Order Investments held by a Fund will be included in the Fund’s Tracking Basket in their actual weights (i.e., they will be fully disclosed).<sup>13</sup>

Except for the change noted above, all other representations made in the respective rule filings remain unchanged and will continue to constitute continuing listing requirements for the Funds. The Funds will also continue to comply with the requirements of Rule 8.601-E.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>15</sup> 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.<sup>16</sup>

The proposed rule change is designed to perfect the mechanism of a free and open

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<sup>11</sup> See id.

<sup>12</sup> See Investment Company Act Release No. 812-15606 (March 31, 2025).

<sup>13</sup> See id.

<sup>14</sup> 15 U.S.C. 78f(b).

<sup>15</sup> 15 U.S.C. 78f(b)(5).

<sup>16</sup> 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.

market and, in general, to protect investors and the public interest. The proposed revision is intended to ensure that each of the Funds will comply with the Updated Application and the Amended Exemptive Order that permits the Funds to expand the universe of instruments in which each Fund is permitted to invest. The proposed rule change would permit the Funds to operate consistent with this updated conditions in the Updated Application and the Amended Exemptive Order. Except for the changes noted above, all other representations made in the respective rule filings remain unchanged and as noted, will continue to constitute continuing listing requirements for the Funds.

4. 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 purpose of the Act. As noted, the purpose of the filing is to reflect an amendment to the Prior Exemptive Order governing the listing and trading of these Funds. To the extent that the proposed rule change would continue to permit listing and trading of another type of actively-managed ETF that has characteristics different from existing actively-managed and index ETFs, the Exchange believes that the proposal would benefit investors by continuing to promote competition among various ETF products.

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.

6. Extension of Time Period for Commission Action

Not applicable.

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

The proposed rule change is filed pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder. A proposed rule change may be filed pursuant to Rule 19b-4(f)(6) if it effects a change that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given 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 notes that the Funds are currently listed and traded on the Exchange, and that the proposed rule change would clarify that the Funds will comply with the conditions set forth in the Updated Application and the Amended Exemptive Order to the extent that a Fund invests in Amended Order Investments. The Funds will also continue to comply with the requirements of Rule 8.601-E. Accordingly, this proposed rule change raises no novel regulatory issues. The proposed rule change also does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4.<sup>17</sup>

The Exchange has provided 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 this filing. Pursuant to Rule 19b-4(f)(6)(iii), the Commission may designate a shorter time than the 30-day delayed operative date if such action is consistent with the protection of investors and the public interest. The Exchange respectfully requests that the Commission waive the 30-day delayed operative date so that the proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)<sup>18</sup> and Rule 19b-4(f)(6)<sup>19</sup> thereunder, and also become operative on that same date prior to such 30-day period, so that the Funds can continue to operate in manner consistent with the Commission’s exemptive order. Waiver of the operative delay is therefore consistent with the protection of investors and the public interest.

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.

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<sup>17</sup> 17 CFR 240.19b-4(f)(6).

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b-4(f)(6).

11. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Federal Register.

## EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-NYSEARCA-2025-28)

[Date]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Reflect an Amendment to the Application and Exemptive Order Governing the Fidelity Women’s Leadership ETF and Fidelity Sustainability U.S. Equity ETF

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on April 4, 2025, 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 reflect an amendment to the Application and Exemptive Order governing the Fidelity Women’s Leadership ETF and Fidelity Sustainability U.S. Equity ETF that are listed and traded on the Exchange under NYSE Arca Rule 8.601-E. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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 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.<sup>4</sup> 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. Pursuant to this provision, the Exchange submitted a proposal to list and trade shares (“Shares”) of Active Proxy Portfolio Shares of the Fidelity Women’s

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<sup>4</sup> 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 openend 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 or Custom Basket, as applicable, 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 or Custom Basket, as applicable, 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.”

Leadership ETF and Fidelity Sustainability U.S. Equity ETF<sup>5</sup> (each, a “Fund” and, together, the “Funds”) on the Exchange under NYSE Arca Rule 8.601-E. The Exchange proposes to reflect an amendment to the Prior Application and Prior Exemptive Order (as defined below) governing the listing and trading of the Funds, as follows.

Fidelity Covington Trust, Fidelity Management & Research Company LLC, and Fidelity Distributors Company LLC (the “Applicants”)<sup>6</sup> filed an amended and restated application for an order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (the “Prior Application”).<sup>7</sup> On December 10, 2019, the Commission issued an order, as subsequently amended on August 5, 2021 (the “Prior Exemptive Order”), under the 1940 Act granting the exemptions requested in the Prior Application.<sup>8</sup> The Prior Application and Prior Exemptive Order are applicable to the Funds.

Under the Prior Exemptive Order, the Funds are required to daily publish a basket of securities and cash that, while different from the Fund’s portfolio, is designed to closely track its daily performance (“Tracking Basket”). Further, under the Prior Exemptive Order, a Fund is

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<sup>5</sup> On April 14, 2021, the Commission published the notice of filing and immediate effectiveness relating to the listing and trading of shares of the Fidelity Women’s Leadership ETF and Fidelity Sustainability U.S. Equity ETF. See Securities Exchange Act Release No. 91514 (April 8, 2021), 86 FR 19657 (April 14, 2021) (SR-NYSEArca-2021-23) (“Notice”).

<sup>6</sup> The original applicants were Fidelity Beach Street Trust, Fidelity Management & Research Company, FMR Co., Inc., and Fidelity Distributors Corporation. On January 1, 2020, each of FMR Co., Inc. and certain other Fidelity investment adviser entities merged with and into Fidelity Management & Research Company. Thereafter, Fidelity Management & Research Company redomiciled as a Delaware limited liability company and was renamed Fidelity Management & Research Company LLC. FMR Co., Inc. no longer exists and is thus no longer an applicant. On January 1, 2020, Fidelity Distributors Corporation merged with and into Fidelity Investments Institutional Services Company, Inc. (“FIISC”). FIISC thereafter redomiciled as a Delaware limited liability company and was renamed Fidelity Distributors Company LLC. Fidelity Distributors Corporation also no longer exists and is no longer an applicant. Finally, the Funds have since been registered with the Commission as series of Fidelity Covington Trust. Fidelity Beach Street Trust has agreed to be removed as an applicant from the Application.

<sup>7</sup> See File No. 812-14364, dated November 8, 2019.

<sup>8</sup> See Investment Company Act Release No. 33712 (December 10, 2019); Investment Company Act Release No. 34350 (August 5, 2021).

permitted to invest only in certain enumerated instruments (“Prior Order Investments”).<sup>9</sup> As set forth in the Notice, investments made by the Fidelity Women’s Leadership ETF and Fidelity Sustainability U.S. Equity ETF will comply with the conditions set forth in the Prior Exemptive Order.<sup>10</sup>

On July 30, 2024, as amended on November 22, 2024, January 16, 2025 and February 24, 2025, the Applicants sought to amend the Prior Exemptive Order (the “Updated Application”) to permit a Fund to invest in securities and instruments in addition to Prior Order Investments, including but not limited to fixed income securities, foreign investments that do not trade contemporaneously with Shares, and derivatives (“Amended Order Investments”).<sup>11</sup> As proposed, each Fund’s portfolio would be invested in two sleeves. A Fund will invest the first sleeve solely in Prior Order investments for which the Fund will disclose a Tracking Basket designed to track closely the daily performance of the sleeve (the “Semi-Transparent Sleeve”). A Fund will invest the second sleeve solely in Amended Order Investments and will publicly

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<sup>9</sup> Pursuant to the Prior Application and Prior Exemptive Order, the permissible investments for the Funds include only the following instruments: ETFs, exchange-traded notes, exchange-traded common stocks, common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Shares (“foreign common stocks”), exchange-traded preferred stocks, exchange-traded American Depositary Receipts, exchange-traded real estate investment trusts, exchange-traded commodity pools, exchange-traded metals trusts, exchange-traded currency trusts, and exchange-traded futures that trade contemporaneously with the Shares, as well as cash and cash equivalents, i.e., short-term U.S. Treasury securities, government money market funds, and repurchase agreements. With the exception of foreign common stocks and cash and cash equivalents, all holdings of the Funds will be listed on a U.S. national securities exchange. The Funds will not short positions, will not borrow for investment purposes, and will not purchase any securities that are illiquid investments at the time of purchase. See Notice, 86 FR at 19659, n. 12.

<sup>10</sup> See Notice, 86 FR at 19659, n. 12 & 13.

<sup>11</sup> See File No. 812-15606, dated February 24, 2025. The Funds sought the same investment flexibility to choose its investments as ETFs relying on Rule 6c-11 under the Act (“Rule 6c-11”) subject to the same portfolio holdings disclosure requirements as Rule 6c-11 ETFs with respect to Amended Order Investments. See id. The Funds are not able to operate in reliance on Rule 6c-11 under the Amended Order because they do not and will not disclose all of their portfolio holdings daily as required by the rule. See id., n.7. See also Rule 6c-11(c)(1)(i) (requiring an ETF to disclose prominently on its website, publicly available and free of charge, the portfolio holdings that will form the basis for the Fund’s calculation of per share NAV).

disclose all such investments daily in accordance with the requirements of rule 6c-11(c) under the 1940 Act (the “Fully-Transparent Sleeve”). Applicants represented that the Funds do not intend to use Amended Order Investments to hedge or otherwise offset exposure to Prior Order Investments.<sup>12</sup>

On March 31, 2025, the Commission issued an amended exemptive order (the “Amended Exemptive Order”) that, among other things, requires each Fund, to the extent it invests in Amended Order Investments, to publish a new Tracking Basket that consists of two distinct portions: (1) a first portion corresponding to the Semi-Transparent Sleeve; and (2) a second portion corresponding to the Fully-Transparent Sleeve that fully discloses all Amended Order Investments in a manner consistent with Rule 6c-11(c)(1). Under the Amended Exemptive Order, the ratio of the Fully-Transparent Sleeve portion of the Tracking Basket to the total Tracking Basket will correspond to the ratio of the Amended Order Investments to the ETF’s aggregate portfolio holdings. The ratio of the Semi-Transparent portion of the Tracking Basket to the total Tracking Basket will correspond to the ratio of all investments other than Amended Order Investments to the ETF’s aggregate portfolio holdings.<sup>13</sup> All Amended Order Investments held by a Fund will be included in the Fund’s Tracking Basket in their actual weights (i.e., they will be fully disclosed).<sup>14</sup>

Except for the change noted above, all other representations made in the respective rule filings remain unchanged and will continue to constitute continuing listing requirements for the Funds. The Funds will also continue to comply with the requirements of Rule 8.601-E.

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<sup>12</sup> See id.

<sup>13</sup> See Investment Company Act Release No. 812-15606 (March 31, 2025).

<sup>14</sup> See id.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>15</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>16</sup> 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.<sup>17</sup>

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. The proposed revision is intended to ensure that each of the Funds will comply with the Updated Application and the Amended Exemptive Order that permits the Funds to expand the universe of instruments in which each Fund is permitted to invest. The proposed rule change would permit the Funds to operate consistent with this updated conditions in the Updated Application and the Amended Exemptive Order. Except for the changes noted above, all other representations made in the respective rule filings remain unchanged and as noted, will continue to constitute continuing listing requirements for the Funds.

### 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 purpose of the Act. As noted, the purpose of the filing is to reflect an amendment to the Prior Exemptive Order

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<sup>15</sup> 15 U.S.C. 78f(b).

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> 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.

governing the listing and trading of these Funds. To the extent that the proposed rule change would continue to permit listing and trading of another type of actively-managed ETF that has characteristics different from existing actively-managed and index ETFs, the Exchange believes that the proposal would benefit investors by continuing to promote competition among various ETF products.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>18</sup> and Rule 19b-4(f)(6) thereunder.<sup>19</sup> Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>20</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>21</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon

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<sup>18</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>19</sup> 17 CFR 240.19b-4(f)(6).

<sup>20</sup> 17 CFR 240.19b-4(f)(6).

<sup>21</sup> 17 CFR 240.19b-4(f)(6)(iii).

filing.

At any time within 60 days of the filing of such 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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>22</sup> of the Act to determine whether the proposed rule change should be approved or 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-NYSEARCA-2025-28 on the subject line.

##### Paper Comments:

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

All submissions should refer to file number SR-NYSEARCA-2025-28. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post

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<sup>22</sup> 15 U.S.C. 78s(b)(2)(B).

all comments on the Commission's internet website (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEARCA-2025-28 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>23</sup> 17 CFR 200.30-3(a)(12).