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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-89191; File No. SR-NYSEArca-2019-92]

Self-Regulatory Organizations; NYSE Arca, Inc.; 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

June 30, 2020

I. Introduction

On December 23, 2019, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of the following under NYSE Arca Rule 8.601-E (Active Proxy Portfolio Shares): T. Rowe Price Blue Chip Growth ETF, T. Rowe Price Dividend Growth ETF, T. Rowe Price Growth Stock ETF, and T. Rowe Price Equity Income ETF (“Funds”).³ The proposed rule change was published for comment in the Federal Register on January 3, 2020.⁴

¹ 15 U.S.C.78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange originally proposed to adopt NYSE Arca Rule 8.601-E to permit the Exchange to list and trade Managed Portfolio Securities, and to list and trade Shares of the Funds under proposed Exchange Rule 8.601-E (Managed Portfolio Securities). In Amendment No. 1, the Exchange removed the proposal to adopt proposed NYSE Arca Rule 8.601-E (Managed Portfolio Securities) and revised the proposal to seek to list and trade Shares of the Funds under proposed NYSE Arca Rule 8.601-E (Active Proxy Portfolio Shares). See Amendment No. 1, *infra* note 7. See also Amendment No. 6 to SR-NYSEArca-2019-95 (proposing to adopt NYSE Arca Rule 8.601-E to list and trade Active Proxy Portfolio Shares, available on the Commission’s website at <https://www.sec.gov/comments/sr-nysearca-2019-95/srnysearca201995-7329866-218548.pdf>). The Commission recently approved the Exchange’s proposed rule change to adopt NYSE Arca Rule 8.601-E to permit the listing and trading of Active Proxy Portfolio Shares. See Securities Exchange Act Release No. 89185 (June 29, 2020) (SR-

On February 13, 2020, pursuant to Section 19(b)(2) of the Act,⁵ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁶ On March 31, 2020, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.⁷ On April 1, 2020, the Commission published Amendment No. 1 for notice and comment and instituted proceedings under Section 19(b)(2)(B) of the Act⁸ to determine whether to approve or disapprove the proposed rule change.⁹ On May 2020, 2020, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change, as amended by Amendment No. 1.¹⁰ On June 19, 2020, the Exchange filed Amendment No. 3 to the proposed rule change, which replaced and superseded the proposed rule change, as amended by

NYSEArca-2019-95) (“Active Proxy Portfolio Shares Order”).

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

⁵ 15 U.S.C. 78s(b)(2).

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

⁷ Amendment No. 1 is available on the Commission’s website at <https://www.sec.gov/comments/sr-nysearca-2019-92/srnysearca201992-7015540-214975.pdf>.

⁸ 15 U.S.C. 78s(b)(2)(B).

⁹ See Securities Exchange Act Release No. 88535, 85 FR 19554 (April 7, 2020).

¹⁰ Amendment No. 2 is available on the Commission’s website at <https://www.sec.gov/comments/sr-nysearca-2019-92/srnysearca201992-7220751-216933.pdf>.

Amendment No. 2.¹¹ The Commission has received no comments on the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 3, from interested persons and is approving the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, as Modified by Amendment No. 3

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

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

1. Purpose

The Exchange has proposed to add new NYSE Arca Rule 8.601-E for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges (“UTP”), of Active Proxy Portfolio Shares, which are securities issued by an actively managed open-end investment management company.¹² Proposed Commentary .01 to Rule 8.601-E would require

¹¹ Amendment No. 3 is available on the Commission’s website at <https://www.sec.gov/comments/sr-nysearca-2019-92/srnysearca201992-7329868-218550.pdf>.

¹² See Amendment 6 to SR-NYSEArca-2019-95, filed on June 19, 2020. See also, Securities Exchange Act Release No. 87866 (December 30, 2019), 85 FR 357 (January 3, 2020) (SR-NYSEArca-2019-95). Proposed Rule 8.601-E(c)(1) provides that “[t]he term “Active Proxy Portfolio Share” means a security that (a) is issued by an investment company registered under the Investment Company Act of 1940 (“Investment Company”) organized as an open-end management investment company that invests in a portfolio of securities selected by the Investment Company’s investment adviser

the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Active Proxy Portfolio Shares on the Exchange. Therefore, the Exchange is submitting this proposal in order to list and trade shares (“Shares”) of the T. Rowe Price Blue Chip Growth ETF; T. Rowe Price Dividend Growth ETF; T. Rowe Price Growth Stock ETF; and T. Rowe Price Equity Income ETF (each a “Fund” and, collectively, the “Funds”) under proposed Rule 8.601-E.

Key Features of Active Proxy Portfolio Shares

While funds issuing Active Proxy Portfolio Shares will be actively-managed and, to that extent, will be similar to Managed Fund Shares, Active Proxy Portfolio Shares differ from Managed Fund Shares in the following important respects. First, in contrast to Managed Fund Shares, which are actively-managed funds listed and traded under NYSE Arca Rule 8.600-E¹³

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.” Proposed 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.” Proposed 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.”

¹³ The Commission has previously approved listing and trading on the Exchange of a number of issues of Managed Fund Shares under NYSE Arca Rule 8.600-E. See, e.g., Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR-NYSEArca-2008-31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60460 (August 7, 2009), 74 FR

and for which a “Disclosed Portfolio” is required to be disseminated at least once daily,¹⁴ the portfolio for an issue of Active Proxy Portfolio Shares will be publicly disclosed within at least 60 days following the end of every fiscal quarter in accordance with normal disclosure requirements otherwise applicable to open-end management investment companies registered under the 1940 Act.¹⁵ The composition of the portfolio of an issue of Active Proxy Portfolio Shares would not be available at commencement of Exchange listing and trading. Second, in connection with the creation and redemption of Active Proxy Portfolio Shares, such creation or

41468 (August 17, 2009) (SR-NYSEArca-2009-55) (order approving listing of Dent Tactical ETF); 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR-NYSEArca-2010-79) (order approving Exchange listing and trading of Cambria Global Tactical ETF); 63802 (January 31, 2011), 76 FR 6503 (February 4, 2011) (SR-NYSEArca-2010-118) (order approving Exchange listing and trading of the SiM Dynamic Allocation Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF). The Commission also has approved a proposed rule change relating to generic listing standards for Managed Fund Shares. See Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016) (SR-NYSEArca-2015-110) (amending NYSE Arca Equities Rule 8.600 to adopt generic listing standards for Managed Fund Shares).

¹⁴ 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.

¹⁵ 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

redemption may be exchanged for a Proxy Portfolio and/or cash with a value equal to the next-determined net asset value (“NAV”).

A series of Active Proxy Portfolio Shares will disclose the Proxy Portfolio on a daily basis, which, as described above, is designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares, instead of the actual holdings of the Investment Company, as provided by a series of Managed Fund Shares.

The Exchange, after consulting with various Lead Market Makers (“LMMs”) that trade exchange-traded funds (“ETFs”) on the Exchange,¹⁶ believes that market makers will be able to make efficient and liquid markets priced near the ETF’s intraday value, and market makers employ market making techniques such as “statistical arbitrage,” including correlation hedging, beta hedging, and dispersion trading, which is currently used throughout the financial services industry, to make efficient markets in exchange-traded products.¹⁷ For Active Proxy Portfolio

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.

¹⁶ The term “Lead Market Maker” is defined in Rule 1.1(w) to mean a registered Market Maker that is the exclusive Designated Market Maker in listings for which the Exchange is the primary market.

¹⁷ Statistical arbitrage enables a trader to construct an accurate proxy for another instrument, allowing it to hedge the other instrument or buy or sell the instrument when it is cheap or expensive in relation to the proxy. Statistical analysis permits traders to discover correlations based purely on trading data without regard to other fundamental drivers. These correlations are a function of differentials, over time, between one instrument or group of instruments and one or more other instruments. Once the nature of these price deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging proxy has been identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period making corrections where warranted. In the case of correlation hedging, the analysis seeks to find a proxy that matches the pricing behavior of a fund. In the case of beta hedging, the analysis seeks to determine the relationship between the price movement over time of a fund and that of another stock. Dispersion trading is a hedged strategy designed to take advantage of relative value differences in implied volatilities

Shares, market makers may use the knowledge of a fund's means of achieving its investment objective, as described in the applicable fund registration statement, as well as a fund's disclosed Proxy Portfolio, to construct a hedging proxy for a fund to manage a market maker's quoting risk in connection with trading fund shares. Market makers can then conduct statistical arbitrage between their hedging proxy and shares of a fund, buying and selling one against the other over the course of the trading day. This ability should permit market makers to make efficient markets in an issue of Active Proxy Portfolio Shares without precise knowledge of a fund's underlying portfolio. This is similar to certain other existing exchange-traded products (for example, ETFs that invest in foreign securities that do not trade during U.S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as market makers gain more confidence in their real-time hedges.

The Shares of each Fund will be issued by T. Rowe Price Exchange-Traded Funds, Inc. ("Issuer"), a corporation organized under the laws of the State of Maryland, which may be comprised of multiple separate series, and registered with the Commission as an open-end management investment company.¹⁸ The investment adviser for the Funds will be T. Rowe Price

between an index and the component stocks of that index. Such trading strategies will allow market participants to engage in arbitrage between series of Active Proxy Portfolio Shares and other instruments, both through the creation and redemption process and strictly through arbitrage without such processes.

¹⁸ The Issuer is registered under the 1940 Act. On December 11, 2019, the Issuer filed an initial registration statement on Form N-1A under the Securities Act of 1933 Act ("1933 Act") (15 U.S.C. 77a) and under the 1940 Act relating to the Funds (File Nos. 333-235450 and 811-23494) (the "Registration Statement"). The Issuer filed a seventh amended application for an order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812-14214), dated October 16, 2019 ("Application"). On December 10, 2019, the Commission issued an order ("Exemptive Order") under the 1940 Act granting the exemptions requested in the Application (Investment Company Act Release No. 33713, December 10, 2019). Investments made by the Funds will comply with the conditions set forth in the

Associates, Inc. (“Adviser”). State Street Bank and Trust Co. will serve as the Funds’ transfer agent, custodian, and will conduct certain administrative functions (the “Transfer Agent” or “Custodian”). T. Rowe Price Investment Services, Inc., a registered broker dealer and an affiliate of the Adviser, will serve as the distributor (“Distributor”) of the Shares.

Proposed Commentary.04 to Rule 8.601-E provides that, if the investment adviser to the Investment Company issuing Active Proxy Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a “fire wall” between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company’s Actual Portfolio and/or Proxy Portfolio.¹⁹ Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company’s Actual Portfolio and/or Proxy Portfolio or has access to non-public information regarding the Investment Company’s Actual Portfolio and/or Proxy Portfolio or changes thereto must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio and/or Proxy Portfolio or changes thereto. Proposed Commentary .04 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Rule 5.2-E(j)(3); however, proposed Commentary .04, in connection with the establishment of a “fire wall” between the investment adviser and the broker-dealer, reflects the applicable open-end fund’s portfolio, not an underlying benchmark index, as is the case with index-based funds.²⁰

Application and the Exemptive Order. The description of the operation of the Funds herein is based, in part, on the Registration Statement and the Application.

¹⁹ The text of proposed Commentary .04 to Rule 8.601-E is contained in Amendment 6 to SR-NYSEArca-2019-95. See note 4, *supra*.

²⁰ An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Adviser and its

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

In addition, proposed Commentary.05 to Rule 8.601-E provides that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company’s Actual Portfolio or the Proxy Portfolio or changes thereto, must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company Actual Portfolio or the Proxy Portfolio or changes thereto.²¹ Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or

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

²¹ The text of proposed Commentary .05 to NYSE Arca Rule 8.601-E is included in Amendment 6 to SR-NYSEArca-2019-95. See note 4, supra.

entity will erect and maintain a “fire wall” between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company Actual Portfolio or Proxy Portfolio.

The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer and has implemented and will maintain a “fire wall” with respect to such broker-dealer affiliate regarding access to information concerning the composition and/or changes to a Fund’s Actual Portfolio and/or Proxy Portfolio.

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

In addition, any person or entity, including any service provider for a Fund, who has access to non-public information regarding a Fund’s Actual Portfolio or the Proxy Portfolio or changes thereto, will be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding a Fund’s Actual Portfolio and/or the

Proxy Portfolio or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity has erected and will maintain a “fire wall” between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to a Fund’s Actual Portfolio and/or Proxy Portfolio.

Description of the Funds

According to the Application, for each Fund, the Adviser will identify its Proxy Portfolio, which could be a broad-based securities index (e.g., the S&P 500) or a Fund’s recently disclosed portfolio holdings. The Proxy Portfolio will be determined such that at least 80% of its total assets will overlap with the portfolio weightings of a Fund. Although the Adviser may change a Fund’s Proxy Portfolio at any time, the Adviser currently does not expect to make such changes more frequently than quarterly (for example, in connection with the release of a Fund’s portfolio holdings). The Adviser will publish a new Proxy Portfolio for a Fund only before the commencement of trading of such Fund’s Shares on that “Business Day,”²² and the Adviser will not make intra-day changes to the Proxy Portfolio except to correct errors in the published Proxy Portfolio. For the reasons described herein, the Adviser believes that each Fund’s Proxy Portfolio will be a high-quality hedging vehicle, the value of which will provide arbitrageurs with a high quality pricing signal.

In addition, on each Business Day, before commencement of trading of Shares, the “Portfolio Overlap” will be published on the Funds’ website. The Portfolio Overlap will be the percentage weight overlap between the prior Business Day’s Proxy Portfolio’s holdings

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

compared to the holdings of a Fund that formed the basis for that Fund's calculation of NAV at the end of the prior Business Day.²³ In addition, each Fund will disclose the "Daily Deviation"²⁴ between the Proxy Portfolio and a Fund daily, as well as "Empirical Percentiles,"²⁵ which are quantitative summaries of the Daily Deviation data for the last year. Each Fund will also disclose its "Tracking Error."²⁶

According to the Application and Exemptive Order, the Adviser expects that the Proxy Portfolio, the Portfolio Overlap, the Daily Deviations and related information will provide a set of high-quality proxy information that arbitrageurs will use to construct a hedging basket. The Portfolio Overlap, Daily Deviation, and Empirical Percentile data, which will be disclosed daily on the Funds' website, will help arbitrageurs by describing the market behavior of the Proxy Portfolio and how it relates to a Fund's portfolio holdings, and by providing historical valuation data and analysis.

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

T. Rowe Price Blue Chip Growth ETF

²³ According to the Registration Statement, "Portfolio Overlap" indicates how much of a Fund's portfolio securities overlap with a Fund's Proxy Portfolio as of the end of the prior business day.

²⁴ According to the Registration Statement, the Daily Deviation shows the difference in performance between the NAV of a Fund and the NAV of the Proxy Portfolio.

²⁵ According to the Registration Statement, the Empirical Percentiles shows frequency and magnitude of performance differences between a Fund and the Proxy Portfolio over time.

²⁶ According to the Registration Statement, "Tracking Error" is the deviation over the past three months of the daily proxy spread (i.e., the difference, in percentage terms, between the Proxy Portfolio's per share NAV and that of the fund at the end of the trading day).

The Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order and the holdings will be consistent with all requirements in the Application and Exemptive Order.²⁷ Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the Intermarket Surveillance Group ("ISG") or with which the Exchange has in place a comprehensive surveillance sharing agreement.

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

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

T. Rowe Price Dividend Growth ETF

²⁷ According to the Application and Exemptive Order, each Fund will only invest in exchange-traded common stocks, common stocks listed on a foreign exchange that trade on such exchange synchronously with the Shares ("foreign common stocks") in the Exchange's Core Trading Session (normally 9:30 a.m. to 4:00 p.m. Eastern time ("E.T.")), ETFs traded on a U.S. exchange, exchange-traded notes ("ETNs") traded on a U.S. exchange, 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 contracts (collectively, "exchange-traded instruments") that trade synchronously with a Fund's Shares, as well as cash and cash equivalents. For purposes of this filing, cash equivalents are short-term U.S. Treasury securities, government money market funds, and repurchase agreements. The Funds 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.

The Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order and the holdings will be consistent with all requirements in the Application and Exemptive Order.²⁸ Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

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

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

T. Rowe Price Growth Stock ETF

The Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order and the holdings will be consistent with all requirements in the Application and Exemptive Order.²⁹ Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

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

The Fund will normally invest at least 80% of its net assets in the common stocks of a diversified group of growth companies. While it may invest in companies of any market

²⁸ See note 27, supra.

²⁹ See note 27, supra.

capitalization, the Fund generally seeks investments in stocks of large-capitalization companies with one or more of the following characteristics: strong cash flow and an above-average rate of earnings growth; the ability to sustain earnings momentum during economic downturns; and occupation of a lucrative niche in the economy and the ability to expand even during times of slow economic growth. The Fund will primarily invest in U.S. exchange-traded securities, cash, and cash equivalents.

T. Rowe Price Equity Income ETF

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

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

The Fund will normally invest at least 80% of its net assets in common stocks listed in the United States, with an emphasis on large-capitalization stocks that have a strong track record of paying dividends or that are believed to be undervalued. The Fund typically will employ a "value" approach in selecting investments. The Fund generally will invest in U.S. exchange-traded securities, cash, and cash equivalents.

Investment Restrictions

³⁰ See note 27, *supra*.

The Shares of each Fund will conform to the initial and continued listing criteria under proposed Rule 8.601-E. Each Fund's holdings will be limited to and consistent with permissible holdings as described in the Application and all requirements in the Application and Exemptive Order.³¹

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

Purchases and Redemptions

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

Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Accordingly, except where the purchase or redemption will include cash under the circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments ("Deposit Instruments"), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments ("Redemption

³¹ See note 27, *supra*.

Instruments”). The names and quantities of the instruments that constitute the Deposit Instruments and the Redemption Instruments for a Fund (collectively, the “Creation Basket”) will be the same as a Fund’s designated Proxy Portfolio, except to the extent that a Fund requires purchases and redemptions to be made entirely or in part on a cash basis, as described below.

If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the “Cash Amount”).

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

A Fund that normally issues and redeems Creation Units in-kind may require purchases and redemptions to be made entirely or in part on a cash basis. In such an instance, a Fund will announce, before the open of trading in the Core Trading Session on a given Business Day, that all purchases, all redemptions or all purchases and redemptions on that day will be made wholly or partly in cash. A Fund may also determine, upon receiving a purchase or redemption order from an Authorized Participant (as defined below), to have the purchase or redemption, as applicable, be made entirely or in part in cash.³²

Each Business Day, before the open of trading on the Exchange, a Fund will cause to be

³² The Adviser represents that, to the extent that a Fund allows creations and redemptions to be conducted in cash, such transactions will be effected in the same manner for all Authorized Participants transacting in cash.

published through the National Securities Clearing Corporation (“NSCC”) the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Amount (if any) for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following Business Day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket. The Proxy Portfolio will be published each Business Day regardless of whether a Fund decides to issue or redeem Creation Units entirely or in part on a cash basis.

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

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

Availability of Information

The Funds’ website (www.troweprice.com), which will be publicly available prior to the

public offering of Shares, will include a form of the prospectus for each Fund that may be downloaded. The Funds' website will include on a daily basis, per Share for each Fund, the prior Business Day's NAV and the "Closing Price" or "Bid/Ask Price,"³³ and a calculation of the premium/discount of the Closing Price or Bid/Ask Price against such NAV³⁴. The Adviser has represented that the Funds' website will also provide: (1) any other information regarding premiums/discounts as may be required for other ETFs under Rule 6c-11 under the 1940 Act, as amended, and (2) any information regarding the bid/ask spread for a Fund as may be required for other ETFs under Rule 6c-11 under the 1940 Act, as amended. The website and information will be publicly available at no charge. The Funds' website also will disclose the information required under proposed Rule 8.601-E(c)(3).³⁵

³³ The records relating to Bid/Ask Prices will be retained by the Funds or their service providers. The "Bid/Ask Price" is the midpoint of the highest bid and lowest offer based upon the National Best Bid and Offer as of the time of calculation of the Fund's NAV. The "National Best Bid and Offer" is the current national best bid and national best offer as disseminated by the Consolidated Quotation System or UTP Plan Securities Information Processor. The "Closing Price" of Shares is the official closing price of the Shares on the Exchange.

³⁴ The "premium/discount" refers to the premium or discount to NAV at the end of a trading day and will be calculated based on the last Bid/Ask Price or the Closing Price on a given trading day.

³⁵ See note 12, *supra*. Proposed Rule 8.601-E (c)(3) provides that the website for each series of Active Proxy Portfolio Shares shall disclose the information regarding the Proxy Portfolio as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series, including the following, to the extent applicable:

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

The Proxy Portfolio holdings (including the identity and quantity of investments in the Proxy Portfolio) will be publicly available on the Funds' website before the commencement of trading in Shares on each Business Day.

The website also will include information relating to Portfolio Overlap, Daily Deviation, Empirical Percentile and Tracking Error for each Fund, as discussed above.

The Exchange notes that the Application provides that the Issuer will comply with Regulation Fair Disclosure, which prohibits selective disclosure of any material non-public information.

Typical mutual fund-style annual, semi-annual and quarterly disclosures contained in the Funds' Commission filings will be provided on the Funds' website on a current basis.³⁶ Thus, each Fund will publish the portfolio contents of its Actual Portfolio on a periodic basis within at least 60 days following the end of every fiscal quarter.

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

Information regarding the market price of Shares and trading volume in Shares, will be continually available on a real-time basis throughout the day on brokers' computer screens and

³⁶ See note 15, *supra*.

other electronic services. The previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Updated price information for U.S. exchange-listed equity securities is available through major market data vendors or securities exchanges trading such securities. Quotation and last sale information for the Shares, ETFs, ETNs, U.S. exchange-traded common stocks, preferred stocks and ADRs will be available via the Consolidated Tape Association ("CTA") high-speed line or from the exchange on which such securities trade. Price information for futures, foreign stocks and cash equivalents is available through major market data vendors. Intraday pricing information for all constituents of the Proxy Portfolio that are exchange-traded, which includes all eligible instruments except cash and cash equivalents, will be available on the exchanges on which they are traded and through subscription services. Intraday pricing information for cash equivalents will be available through subscription services and/or pricing services.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of a Fund.³⁷ Trading in Shares of a Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12-E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Rule 8.601-E(d)(2)(D), which sets forth circumstances under which Shares of a Fund will be halted.

³⁷ See NYSE Arca Rule 7.12-E.

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

In addition, if the Exchange becomes aware that the NAV, Proxy Portfolio or Actual Portfolio with respect to a series of Active Proxy Portfolio Shares is not disseminated to all market participants at the same time, the Exchange shall halt trading in such series until such time as the NAV, Proxy Portfolio or Actual Portfolio is available to all market participants at the same time.

Trading Rules

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

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

during all trading sessions.

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

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

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Exchange, as well as cross market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.³⁸ The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

³⁸ FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA’s performance under this regulatory services agreement.

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

FINRA, on behalf of the Exchange, or the Exchange or both will communicate as needed regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of the Intermarket Surveillance Group (“ISG”), and FINRA, on behalf of the Exchange, or the Exchange or both may obtain trading information regarding trading such securities and exchange-traded instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.³⁹

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

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

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

³⁹ For a list of the current members of ISG, see www.isgportal.org.

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

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

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

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

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁴⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁴¹ 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.⁴²

With respect to the proposed listing and trading of Shares of the Funds, the Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in proposed NYSE Arca Rule 8.601-E. One-hundred percent of the value of a Fund’s Actual Portfolio (except for cash, cash equivalents and Treasury securities) at

⁴⁰ 15 U.S.C. 78f(b).

⁴¹ 15 U.S.C. 78f(b)(5).

⁴² The Exchange represents that, for initial and continued listing, the Funds will be in compliance with Rule 10A-3 under the Act, as provided by NYSE Arca Rule 5.3-E.

the time of purchase will be listed on U.S. or foreign securities exchanges (or, in the limited case of futures contracts, U.S. futures exchanges). The listing and trading of such securities is subject to rules of the exchanges on which they are listed and traded, as approved by the Commission.

With respect to the proposed listing and trading of Shares of a Fund, the Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.601-E. Each Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order and the holdings will be consistent with all requirements in the Application and Exemptive Order.⁴³ The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities and exchange-traded instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Any foreign common stocks held by a Fund will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Exchange, after consulting with various LMMs that trade ETFs on the Exchange, believes that market makers will be able to make efficient and liquid markets priced near the

⁴³ See note 27, *supra*

ETF's intraday value, and market makers employ market making techniques such as "statistical arbitrage," including correlation hedging, beta hedging, and dispersion trading, which is currently used throughout the financial services industry, to make efficient markets in exchange-traded products.⁴⁴ For Active Proxy Portfolio Shares, market makers may use the knowledge of a fund's means of achieving its investment objective, as described in the applicable fund registration statement, as well as a fund's disclosed Proxy Portfolio, to construct a hedging proxy for a fund to manage a market maker's quoting risk in connection with trading fund shares. Market makers can then conduct statistical arbitrage between their hedging proxy and shares of a fund, buying and selling one against the other over the course of the trading day. This ability should permit market makers to make efficient markets in an issue of Active Proxy Portfolio Shares without precise knowledge of a fund's underlying portfolio. This is similar to certain other existing exchange-traded products (for example, ETFs that invest in foreign securities that do not trade during U.S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as market makers gain more confidence in their real-time hedges.

The daily dissemination of the identity and quantity of Proxy Portfolio component investments, together with the right of Authorized Participants to create and redeem each day at the NAV, will be sufficient for market participants to value and trade shares in a manner that will not lead to significant deviations between the Bid/Ask Price and NAV of shares of a series of Active Proxy Portfolio Shares.

The pricing efficiency with respect to trading a series of Active Proxy Portfolio Shares

⁴⁴ See note 17, *supra*.

will generally rest on the ability of market participants to arbitrage between the shares and a fund's portfolio, in addition to the ability of market participants to assess a fund's underlying value accurately enough throughout the trading day in order to hedge positions in shares effectively. Professional traders can buy shares that they perceive to be trading at a price less than that which will be available at a subsequent time and sell shares they perceive to be trading at a price higher than that which will be available at a subsequent time. It is expected that, as part of their normal day-to-day trading activity, market makers assigned to shares by the Exchange, off-exchange market makers, firms that specialize in electronic trading, hedge funds and other professionals specializing in short-term, non-fundamental trading strategies will assume the risk of being "long" or "short" shares through such trading and will hedge such risk wholly or partly by simultaneously taking positions in correlated assets⁴⁵ or by netting the exposure against other, offsetting trading positions – much as such firms do with existing ETFs and other equities. Disclosure of a fund's investment objective and principal investment strategies in its prospectus and SAI should permit professional investors to engage easily in this type of hedging activity.

The Exchange believes that the Funds and Active Proxy Portfolio Shares generally, will provide investors with a greater choice of active portfolio managers and active strategies through which they can manage their assets in an ETF structure. This greater choice of active asset

⁴⁵ Price correlation trading is used throughout the financial industry. It is used to discover both trading opportunities to be exploited, such as currency pairs and statistical arbitrage, as well as for risk mitigation such as dispersion trading and beta hedging. These correlations are a function of differentials, over time, between one or multiple securities pricing. Once the nature of these price deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging basket has been identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period, making corrections where warranted.

management is expected to be similar to the diversity of active managers and strategies available to mutual fund investors. Unlike mutual fund investors, investors in Active Proxy Portfolio Shares would also accrue the benefits derived from the ETF structure, such as lower fund costs, tax efficiencies, intraday liquidity, and pricing that reflects current market conditions rather than end-of-day pricing.

The Adviser represents that, unlike ETFs that publish their portfolios on a daily basis, the Funds, as Active Proxy Portfolio Shares, will allow for efficient trading of Shares through an effective Fund portfolio transparency substitute - Proxy Portfolio transparency. The Adviser believes that this approach will provide an important benefit to investors by protecting a Fund from the potential for front-running of portfolio transactions and the potential for free-riding on a Fund's portfolio strategies, each of which could adversely impact the performance of a Fund.

The Exchange believes that Active Proxy Portfolio Shares will provide the platform for many more asset managers to launch ETFs, increasing the investment choices for consumers of actively managed funds, which should lead to a greater competitive landscape that can help to reduce the overall costs of active investment management for retail investors. Unlike mutual funds, Active Proxy Portfolio Shares would be able to use the efficient share settlement system in place for ETFs today, translating into a lower cost of maintaining shareholder accounts and processing transactions.

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

With respect to the Funds, the proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the Issuer, prior to commencement of trading in the Shares, that the NAV per Share of a Fund will be calculated daily and that the NAV, Proxy Portfolio and Actual Portfolio will be made available to all market participants at the same time. Investors can also obtain a Fund's SAI, shareholder reports, and its Form N-CSR, Form N-PORT and Form N-CEN. A Fund's SAI and shareholder reports will be available free upon request from the applicable Fund, and those documents and the Form N-CSR, Form N-PORT and Form N-CEN may be viewed on-screen or downloaded from the Commission's website.

Proposed Commentary .03 to NYSE Arca Rule 8.601-E provides that the Exchange will implement and maintain written surveillance procedures for Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will, upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Active Proxy Portfolio Shares. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Active Proxy Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of Active Proxy Portfolio Shares. With respect to the Funds, the Adviser will make available daily to FINRA and the Exchange the portfolio holdings of a Fund upon request in order to facilitate the performance of the surveillances referred to above.

The Exchange will utilize its existing procedures to monitor issuer compliance with the requirements of proposed Rule 8.601-E. For example, the Exchange will continue to use

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

In addition, with respect to the Funds, a large amount of information will be publicly available regarding the Funds and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares, ETFs, ETNs, U.S. exchange-traded common stocks, preferred stocks and ADRs will be available via the CTA high-speed line or from the exchange on which such securities trade. Price information for futures, foreign stocks and cash equivalents is available through major market data vendors. The website for the Funds will include a form of the prospectus for the Funds that may be downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis. Trading in Shares of a Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12-E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to proposed NYSE Arca Rule 8.601-E(d)(2)(D), which sets forth circumstances under which Shares of the Funds may be

halted. In addition, as noted above, investors will have ready access to the Proxy Portfolio, and quotation and last sale information for the Shares. The Proxy Portfolio holdings (including the identity and quantity of investments in the Proxy Portfolio) will be publicly available on the Funds' website before the commencement of trading in Shares on each Business Day. The Shares will conform to the initial and continued listing criteria under proposed Rule 8.601-E.

Each Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order and the holdings will be consistent with all requirements in the Application and Exemptive Order.⁴⁶ Any foreign common stocks held by a Fund will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

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

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange will obtain a representation from the Adviser, prior to commencement of trading in the Shares of a Fund, that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act,

⁴⁶ See note 26, *supra*.

the Exchange will monitor for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

As noted above, with respect to the Funds, the Exchange has in place surveillance procedures relating to trading in the Funds’ Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, with respect to the Funds, investors will have ready access to information regarding the Proxy Portfolio and quotation and last sale information for the Shares.

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

In accordance with Section 6(b)(8) of the Act,⁴⁷ the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change would permit listing and trading of another type of actively-managed ETF that has characteristics different from existing actively-managed and index ETFs, including that the portfolio is disclosed at least once quarterly as opposed to daily, and would introduce additional competition among various ETF products to the benefit of investors.

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

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

⁴⁷ 15 U.S.C. 78f(b)(8).

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with the Act and rules and regulations thereunder applicable to a national securities exchange.⁴⁸ In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 3 is consistent with Section 6(b)(5) of the Act,⁴⁹ which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that in a separate order, it approved the Exchange's proposed rule change to adopt NYSE Arca Rule 8.601-E to permit the listing and trading of Active Proxy Portfolio Shares.⁵⁰

The Commission believes that the proposal is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading in the Shares when a reasonable degree of certain pricing transparency cannot be assured. As such, the Commission believes the proposal is reasonably designed to maintain a fair and orderly market for trading the Shares. The Commission also finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act, which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and

⁴⁸ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁴⁹ 15 U.S.C. 78f(b)(5).

⁵⁰ See note 3 supra.

orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities.

Specifically, the Commission notes that the Exchange, prior to commencement of trading in the Shares, will obtain a representation from the issuer of the Shares of each Fund that the NAV per Share will be calculated daily and that the NAV, Proxy Portfolio, and Actual Portfolio for each Fund will be made available to all market participants at the same time.⁵¹ Information regarding the market price of Shares and trading volume in Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Quotation and last-sale information for the Shares, ETFs, ETNs, U.S. exchange-traded common stocks, preferred stocks, and ADRs will be available via the Consolidated Tape Association high-speed line or from the exchange on which such securities trade. Price information for futures, foreign stocks and cash equivalents is available through major market data vendors. The Funds' website will include additional information updated on a daily basis, including, on a per Share basis for each Fund, the prior business day's NAV, the closing price or bid/ask price at the time of calculation of such NAV, and a calculation of the premium or discount of the closing price or bid/ask price against such NAV. The website will also disclose the percentage weight overlap between the prior business day's Proxy Portfolio's holdings compared to the holdings of a Fund that formed the basis for that Fund's calculation of NAV at the end of the prior business day, and any other information regarding premiums and discounts and the bid/ask spread for a Fund as may be required for other ETFs under Rule 6c-11 under the 1940 Act. The Proxy Portfolio holdings (including the identity and quantity of investments in the

⁵¹ See NYSE Arca Rule 8.601-E(d)(1)(B).

Proxy Portfolio) will be publicly available on the Funds' website before the commencement of trading in Shares on each Business Day and the Funds' website will disclose the information required under Rule 8.601-E(c)(3).⁵² The website and information will be publicly available at no charge.

In addition, the Exchange states that intraday pricing information for all constituents of the Proxy Portfolio that are exchange-traded, which includes all eligible instruments except cash and cash equivalents, will be available on the exchanges on which they are traded and through subscription services, and that intraday pricing information for cash equivalents will be available through subscription services and/or pricing services.

The Commission also notes that the Exchange's rules regarding trading halts help to ensure the maintenance of fair and orderly markets for the Shares. Specifically, pursuant to its rules, the Exchange may consider all relevant factors in exercising its discretion to halt trading in the Shares and will halt trading in the Shares under the conditions specified in NYSE Arca Rule 7.12-E. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, including (1) the extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Portfolio and/or Actual Portfolio; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.⁵³ Trading in the Shares also will be

⁵² See Rule 8.601-E(c)(3), which 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 Investment Company Act of 1940 applicable to such series, including the following, to the extent applicable: (i) ticker symbol; (ii) CUSIP or other identifier; (iii) description of holding; (iv) quantity of each security or other asset held; and (v) percentage weighting of the holding in the portfolio.

⁵³ See NYSE Arca Rule 8.601-E(d)(2)(D)(i).

subject to NYSE Arca Rule 8.601-E(d)(2)(D), which sets forth additional circumstances under which trading in the Shares will be halted.

The Commission also believes that the proposal is reasonably designed to help prevent fraudulent and manipulative acts and practices. Specifically, the Exchange provides that:

- The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer and has implemented and will maintain a “fire wall” with respect to such broker-dealer affiliate regarding access to information concerning the composition of and/or changes to a Fund’s Actual Portfolio and/or Proxy Portfolio;
- Any person related to the Adviser or a Fund who makes decisions pertaining to the Fund’s Actual Portfolio or Proxy Portfolio or who has access to non-public information regarding a Fund’s Actual Portfolio and/or the Proxy Portfolio or changes thereto are subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding a Fund’s Actual Portfolio and/or the Proxy Portfolio or changes thereto;
- In the event (a) the Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer or (b) any new adviser or sub-adviser is a registered broker-dealer, or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition of and/or changes to a Fund’s Actual Portfolio and/or Proxy Portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding a Fund’s Actual Portfolio and/or Proxy Portfolio or changes thereto; and

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

Finally, the Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange,⁵⁴ and that these surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange’s existing rules governing the trading of equity securities.

In support of this proposal, the Exchange represents that:

⁵⁴ See NYSE Arca Rule 8.601-E, Commentary .03, which requires, as part of the surveillance procedures for Active Proxy Portfolio Shares, a Fund’s investment adviser to, upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily Actual Portfolio holdings of the Fund.

- (1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.601-E.
- (2) A minimum of 100,000 Shares for each Fund will be outstanding at the commencement of trading on the Exchange.
- (3) FINRA, on behalf of the Exchange, or the Exchange, or both, will communicate as needed, and may obtain information, regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of the ISG. In addition, the Exchange may obtain information regarding trading in such securities and exchange-traded instruments from markets and other entities with which the Exchange has in place a comprehensive surveillance sharing agreement. Any foreign common stocks held by a Fund will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.
- (4) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.
- (5) For initial and continued listing, the Funds will be in compliance with Rule 10A–3 under the Act.⁵⁵
- (6) Each Fund’s holdings will conform to the permissible investments as set forth in the Application and Exemptive Order and the holdings will be consistent with all requirements set forth in the Application and Exemptive Order. Each Fund’s investments, including derivatives, will be consistent with its investment objective

⁵⁵ See 17 CFR 240.10A–3.

and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage).

- (7) With respect to the Funds, all of the Exchange member obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with Exchange rules and federal securities laws, and the Exchange and FINRA will continue to monitor Exchange members for compliance with such requirements.

The Exchange also represents that all statements and representations made in the filing regarding: (1) the description of the portfolio or reference assets; (2) limitations on portfolio holdings or reference assets; or (3) the applicability of Exchange listing rules specified in the filing constitute continued listing requirements for listing the Shares on the Exchange. In addition, the Exchange represents that the Exchange will obtain a representation from the Adviser, prior to commencement of trading in the Shares of a Fund, that the Adviser will advise the Exchange of any failure by a Fund to comply with the continued listing requirements and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor⁵⁶ for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5-E(m).

⁵⁶ The Commission notes that certain proposals for the listing and trading of exchange-traded products include a representation that the exchange will “surveil” for compliance with the continued listing requirements. See, e.g., Securities Exchange Act Release No. 77499 (April 1, 2016), 81 FR 20428, 20432 (April 7, 2016) (SR-BATS-2016-04). In the context of this representation, it is the Commission’s view that “monitor” and “surveil” both mean ongoing oversight of compliance with the continued listing requirements. Therefore, the Commission does not view “monitor” as a more or less stringent obligation than “surveil” with respect to the continued listing requirements.

IV. Solicitation of Comments on Amendment No. 3 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether the proposed rule change, as modified by Amendment No. 3, is consistent with the Exchange 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-2019-92 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NYSEArca-2019-92. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments

are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2019-92, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 3, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 3 in the Federal Register. In Amendment No. 3, the Exchange modified the description of each Fund and conformed the description of NYSE Arca Rule 8.601-E to the final rule approved in the Active Proxy Portfolio Shares Order.⁵⁷ Amendment No. 3 also provides other clarifications and additional information related to the Funds.⁵⁸ The changes and additional information in Amendment No. 3 assist the Commission in finding that the proposal is consistent with the Exchange Act. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,⁵⁹ to approve the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act⁶⁰ that the proposed rule change (SR-NYSEArca-2019-92), as modified by Amendment No. 3, be, and it hereby is, approved on an accelerated basis.

⁵⁷ See supra note 3.

⁵⁸ See Amendment No. 3, supra note 11.

⁵⁹ 15 U.S.C. 78s(b)(2).

⁶⁰ Id.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶¹

J. Matthew DeLesDernier,
Assistant Secretary.

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⁶¹ 17 CFR 200.30-3(a)(12).