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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87542; File No. SR-NYSEArca-2019-81)

November 14, 2019

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to Establish Generic Listing Standards for Derivative Securities Products that are Permitted to Operate in Reliance on Rule 6c-11 under the Investment Company Act of 1940

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on November 1, 2019, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) a proposed rule change described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes new Rule 5.2-E(j)(8) to establish generic listing standards for Derivative Securities Products that are permitted to operate in reliance on Rule 6c-11 under the Investment Company Act of 1940. In addition, the Exchange proposes to discontinue the quarterly reports currently required with respect to Managed Fund Shares listed on the Exchange pursuant to Commentary .01 to NYSE Arca Rule 8.600-E. The proposed change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

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

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

1. Purpose

The Exchange proposes new Rule 5.2-E(j)(8) to establish “generic” listing standards for Derivative Securities Products⁴ that are permitted to operate in reliance on Rule 6c-11 (“Rule 6c-11”) under the Investment Company Act of 1940 (“1940 Act”).⁵ In addition, the Exchange proposes to discontinue the quarterly reports currently required with respect to Managed Fund Shares listed on the Exchange pursuant to Rule Commentary .01 to Rule 8.600-E.

The Securities and Exchange Commission (“Commission”) recently adopted Rule 6c-11 to permit exchange-traded funds (ETFs) that satisfy certain conditions to operate without obtaining an exemptive order from the Commission under the 1940 Act.⁶ The regulatory

⁴ The term “Derivative Securities Product” is defined in Rule 1.1(k) to mean a security that meets the definition of “derivative securities product” in Rule 19b-4(e) under the Exchange Act. 17 CFR 240.19b-4(e). As provided under Rule 19b-4(e), the term “new derivative securities product” means any type of option, warrant, hybrid securities product or any other security, other than a single equity option or a security futures product, whose value is based, in whole or in part, upon the performance of, or interest in, an underlying instrument. The term “Exchange Act” is defined in Rule 1.1(q) to mean the Securities Exchange Act of 1934, as amended.

⁵ 15 U.S.C. 80a-1.

⁶ See Release Nos. 33-10695; IC-33646; File No. S7-15-18 (Exchange-Traded Funds) (September 25, 2019), 84 FR 57162 (October 24, 2019) (the “Rule 6c-11 Release”).

framework provided in Rule 6c-11 will streamline current procedures and reduce the costs and time frames associated with bringing ETFs to market, thereby enhancing competition among ETF issuers and reducing costs for investors.⁷

Rule 19b-4(e)(1) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (“SRO”) is not deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4,⁸ if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO’s trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the SRO has a surveillance program for the product class.⁹ As contemplated by this Rule, the Exchange proposes new Rule 5.2-E(j)(8) to establish generic listing standards for Derivative Securities

⁷ In approving the rule, the Commission stated that the “rule will modernize the regulatory framework for ETFs to reflect our more than two decades of experience with these investment products. The rule is designed to further important Commission objectives, including establishing a consistent, transparent, and efficient regulatory framework for ETFs and facilitating greater competition and innovation among ETFs.” Rule 6c-11 Release, at 57163. The Commission also stated the following regarding the rule’s impact: “We believe rule 6c-11 will establish a regulatory framework that: (1) Reduces the expense and delay currently associated with forming and operating certain ETFs unable to rely on existing orders; and (2) creates a level playing field for ETFs that can rely on the rule. As such, the rule will enable increased product competition among certain ETF providers, which can lead to lower fees for investors, encourage financial innovation, and increase investor choice in the ETF market.” Rule 6c-11 Release, at 57204.

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

⁹ Currently, “passive” ETFs (Investment Company Units) based on an underlying index as well as actively-managed ETFs (Managed Fund Shares) are listed on the Exchange pursuant to NYSE Arca Rules 5.2-E(j)(3) and 8.600-E, respectively, and such securities are eligible for Exchange listing pursuant to Rule 19b-4(e) if they satisfy the “generic” listing criteria specified in those Exchange rules. The Exchange may file with the Commission a proposed rule change pursuant to Rule 19(b) of the Act to permit listing of Investment Company Units and Managed Fund Shares that do not meet the applicable generic listing criteria. Such securities may be listed and traded on the Exchange following Commission approval or notice of effectiveness of the applicable proposed rule change.

Products that are ETFs that are permitted to operate in reliance on Rule 6c-11. An ETF listed under proposed Rule 5.2-E(j)(8) would therefore not need a separate proposed rule change pursuant to Rule 19b-4 before it can be listed and traded on the Exchange.

The Exchange believes that the proposed generic listing rules for Exchange-Traded Fund Shares, described below, would facilitate efficient procedures for ETFs that are permitted to operate in reliance on Rule 6c-11. The Exchange further believes that the proposed rule is fully consistent with, and will further, the Commission's goals in adopting Rule 6c-11. As with Investment Company Units and Managed Fund Shares listed under the generic listing standards in NYSE Arca Rules 5.2-E(j)(3) and 8.600-E, respectively, series of Exchange-Traded Fund Shares that are permitted to operate in reliance on Rule 6c-11 would be permitted to be listed and traded on the Exchange without a prior Commission approval order or notice of effectiveness pursuant to Section 19(b) of the Act. This will significantly reduce the time frame and costs associated with bringing these securities to market, thereby promoting market competition among issuers of Exchange-Traded Fund Shares, to the benefit of the investing public.

Proposed Rule 5.2-E(j)(8)--Exchange-Traded Fund Shares

The Exchange is proposing standards that would pertain to Exchange-Traded Fund Shares to qualify for listing and trading pursuant to Rule 19b-4(e), as follows.¹⁰

Proposed Rule 5.2-E(j)(8)(a) would provide that the Exchange would consider for trading, whether by listing or pursuant to unlisted trading privileges ("UTP"), Exchange-Traded Fund Shares that meet the criteria of proposed Rule 5.2-E(j)(8).

¹⁰ Rule 6c-11 is effective December 23, 2019. Subject to approval of this proposed rule change, Exchange-Traded Fund Shares that are permitted to operate in reliance on Rule 6c-11 would be eligible for listing and trading on the Exchange under proposed Rule 5.2-E(j)(8) after that date.

Proposed Rule 5.2-E(j)(8)(a)(1) would provide that a Derivative Securities Product listed under proposed Rule 5.2-E(j)(8) would not need to separately meet either the initial or continued listed requirements of any other Exchange rules. For example, an ETF that satisfies the requirements of Rule 6c-11 and therefore is listed pursuant to proposed Rule 5.2-E(j)(8) and is also, for example, an Investment Company Unit, would not need to separately meet the initial or continued listed requirements of Rule 5.2-E(j)(3).

Proposed Rule 5.2-E(j)(8)(b) would specify applicability of the Rule and would provide that it is applicable only to Exchange-Traded Fund Shares. The Rule would further provide that, except to the extent inconsistent with proposed Rule 5.2-E(j)(8), or unless the context otherwise requires, Exchange rules would be applicable to the trading on the Exchange of such securities and that Exchange-Traded Fund Shares would be included within the definition of NMS Stock as defined in Rule 1.1.

Proposed Rule 5.2-E(j)(8)(c) would set forth the definitions that would be used for purposes of the proposed rule as follows:

- Proposed Rule 5.2-E(j)(8)(c)(1) would define the term “1940 Act” to mean the Investment Company Act of 1940, as amended.
- Proposed Rule 5.2-E(j)(8)(c)(2) would define the term “Exchange-Traded Fund” as having the same meaning as the term “exchange-traded fund” as defined in Rule 6c-11(a)(1) under the 1940 Act.¹¹

¹¹ Rule 6c-11(a)(1) defines “exchange-traded fund” as a registered open-end management company: (i) That issues (and redeems) creation units to (and from) authorized participants in exchange for a basket and a cash balancing amount if any; and (ii) Whose shares are listed on a national securities exchange and traded at market-determined prices. The terms “authorized participant,” “basket” and “creation unit” are defined in Rule 6c-11(a).

- Proposed Rule 5.2-E(j)(8)(c)(3) would define the term “Exchange-Traded Fund Share” to mean a share of stock issued by an Exchange-Traded Fund.¹²
- Proposed Rule 5.2-E(j)(8)(c)(4) would define the term "Reporting Authority" to mean, in respect of a particular series of Exchange-Traded Fund Shares, the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Exchange-Traded Fund Shares (if the Exchange is trading such series pursuant to UTP) as the official source for calculating and reporting information relating to such series, including, but not limited to, the amount of any cash distribution to holders of Exchange-Traded Fund Shares, net asset value, or other information relating to the issuance, redemption or trading of Exchange-Traded Fund Shares. As further proposed, a series of Exchange-Traded Fund Shares may have more than one Reporting Authority, each having different functions.¹³

Proposed Rule 5.2-E(j)(8)(d) would specify the limitations on Exchange liability and relates to limitation of the Exchange, the Reporting Authority, or any agent of the Exchange as a result of specified events and conditions. Specifying such limitations of liability is standard in the Exchange’s rules governing the listing of Derivative Securities Products and the proposed rule text is based on Rules 5.2-E(j)(3)(D), 8.100-E(f), 8.201-E(f), 8.200-E(f), 8.202-E(f), 8.203-E(f), 8.204-E(g), 8.300-E(f), 8.400-E(f), 8.500-E(e), 8.600-E(e), and 8.700-E(g).

¹² The definition of Exchange-Traded Fund Shares is the same as the definition of “exchange-traded fund shares” in Rule 6c-11(a) under the 1940 Act.

¹³ Proposed Rule 5.2-E(j)(8)(c)(3) is based, for example, on Rules 8.100-E(a)(2) for Portfolio Depositary Receipts); 8.600-E(c)(4) (for Managed Fund Shares) and 8.700-E(c)(4) (for Managed Trust Securities).

Proposed Rule 5.2-E(j)(8)(e) would provide that Exchange may approve Exchange-Traded Fund Shares for listing and/or trading (including pursuant to UTP) pursuant to Rule 19b-4(e) under the Exchange Act provided that each series of Exchange-Traded Fund Shares must be eligible to operate in reliance on Rule 6c-11 and must satisfy the requirements of proposed Rule 5.2-E(j)(8) upon initial listing and on a continuing basis. As further proposed, an issuer of such securities must notify the Exchange of any failure to comply with such requirements.

Proposed Rule 5.2-E(j)(8)(e)(1) would set forth the initial and continued listing standards for Exchange-Traded Fund Shares to be listed on the Exchange and would provide that Exchange-Traded Fund Shares will be listed and traded on the Exchange subject to the requirement that the investment company issuing a series of Exchange-Traded Fund Shares is in compliance with the requirements of Rule 6c-11(c)¹⁴ on an initial and continued listing basis.

¹⁴ Rule 6c-11(c) (“Conditions”) sets forth certain conditions applicable to exchange-traded funds, and specifies the information required to be disclosed prominently on the fund’s website free of charge, including the following:

(i) Before the opening of regular trading on the primary listing exchange of the exchange-traded fund shares, the estimated cash balancing amount (if any) and the following information (as applicable) for each portfolio holding that will form the basis of the next calculation of current net asset value per share:

(A) Ticker symbol;

(B) CUSIP or other identifier;

(C) Description of holding;

(D) Quantity of each security or other asset held; and

(E) Percentage weight of the holding in the portfolio;

(ii) The exchange-traded fund’s current net asset value per share, market price, and premium or discount, each as of the end of the prior business day;

(iii) A table showing the number of days the exchange-traded fund’s shares traded at a premium or discount during the most recently completed calendar year and the most recently completed calendar quarters since that year (or the life of the exchange-traded fund, if shorter);

Proposed Rule 5.2-E(j)(8)(e)(2) would set forth the standards for suspension of trading or removal of Exchange-Traded Fund Shares from listing on the Exchange and would provide that the Exchange will maintain surveillance procedures for securities listed under proposed Rule 5.2-E(j)(8) and would consider the suspension of trading in, and will commence delisting proceedings under Rule 5.5-E(m) of, a series of Exchange-Traded Fund Shares under any of the following circumstances:

- (i) if the investment company notifies the Exchange that it does not comply with the requirements of Rule 6c-11(c) under the 1940 Act (see proposed Rule 5.2-E(j)(8)(e)(2)(A));
- (ii) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable (see proposed Rule 5.2-E(j)(8)(e)(2)(B)). This proposed rule text is based, for example, on Rules 5.2-E(j)(6)(B)(2)(c)(3)(for Index-Linked Securities); 8.600-E(d)(2)(C)(vi)(for Managed Fund Shares); and 8.700-E(d)(2)(c)(vi)(for Managed Trust Securities).

(iv) A line graph showing exchange-traded fund share premiums or discounts for the most recently completed calendar year and the most recently completed calendar quarters since that year (or the life of the exchange-traded fund, if shorter);

(v) The exchange-traded fund's median bid-ask spread, expressed as a percentage rounded to the nearest hundredth (and computed in a manner described in Rule 6c-11(c)(v)(A) through (D)); and

(vi) If the exchange-traded fund's premium or discount is greater than 2% for more than seven consecutive trading days, a statement that the exchange-traded fund's premium or discount, as applicable, was greater than 2% and a discussion of the factors that are reasonably believed to have materially contributed to the premium or discount, which must be maintained on the website for at least one year thereafter.

Rule 6c-11(c)(4) provides that the exchange-traded fund may not seek, directly or indirectly, to provide investment returns that correspond to the performance of a market index by a specified multiple, or to provide investment returns that have an inverse relationship to the performance of a market index, over a predetermined period of time.

Proposed Rule 5.2-E(j)(8)(f) would provide that transactions in Exchange-Traded Fund Shares would occur during the trading hours specified in Rule 7.34-E(a). As with other Derivative Securities Products listed on the Exchange, Exchange-Traded Fund Shares would trade during the Early, Core, and Late Trading Sessions, as defined in Rule 7.34-E(a). ETP Holders accepting orders in Exchange-Traded Fund Shares in the Early or Late Trading Session would be subject to the customer disclosure requirements specified in Rule 7.34-E(d).

Proposed Rule 5.2-E(j)(8)(g) would provide that the Exchange would implement written surveillance procedures for Exchange-Traded Fund Shares.¹⁵ This proposed rule is based, for example, on Commentary .01(f) to Rule 5.2-E(j)(3) (for Investment Company Units); Commentary .03 to Rule 8.600-E (for Managed Fund Shares); and Commentary .04 to Rule 8.700-E (for Managed Trust Securities).

The Exchange proposes to include Commentary .01 to proposed Rule 5.2-E(j)(8) that would set forth which listing rule would be applicable to Derivative Securities Products that are currently listed on the Exchange and are also Exchange-Traded Funds that are permitted to operate in reliance on Rule 6c-11. As proposed, Commentary .01 to Rule 5.2-E(j)(8) would provide that a Derivative Securities Product that has previously been approved for listing on the Exchange pursuant to the generic listing requirements specified in Rule 5.2-E(j)(3) or Commentary .01 to Rule 8.600-E, or pursuant to a proposed rule change filed and approved or subject to a notice of effectiveness by the Commission, will be deemed to be considered approved for listing under this Rule if such Derivative Securities Product is both (1) permitted to

¹⁵ The Exchange will propose applicable NYSE Arca listing fees for Exchange-Traded Fund Shares in the NYSE Arca Equities Schedule of Fees and Charges in a separate proposed rule change.

operate in reliance on Rule 6c-11 under the 1940 Act, and (2) the prior exemptive relief under the 1940 Act for such Derivative Securities Product has been rescinded.

As further proposed, once such prior exemptive relief has been rescinded, the continued listing requirements applicable to such previously-listed Derivative Securities Products would be those specified in paragraph (e) of Rule 5.2-E(j)(8) and any requirements for listing as specified in Rule 5.2-E(j)(3) or Commentary .01 to Rule 8.600-E, or an approval order or notice of effectiveness of a separate proposed rule change that differ from the requirements of Rule 5.2-E(j)(8) would no longer be applicable to such Derivative Securities Products.

The Exchange believes that this proposed Commentary harmonizes the Exchange's listing standards for all Exchange-Traded Funds that will be listed on the Exchange, even if they were previously listed pursuant to different continuing listed requirements. Specifically, as noted in the Rule 6c-11 Release, one year following the effective date of Rule 6c-11, the Commission will be rescinding those portions of its prior ETF exemptive orders under the 1940 Act that grant relief related to the formation and operation of certain ETFs. The Exchange believes that once this occurs, all Exchange-Traded Funds will be subject to the same requirements under Rule 6c-11 and will no longer be subject to any differing requirements that may have been set forth in the exemptive orders issued before the effective date of Rule 6c-11. The Exchange therefore believes that any such Exchange-Traded Funds that were previously-listed on the Exchange under a different standard should be deemed approved for listing on the Exchange under proposed Rule 5.2-E(j)(8). To maintain consistent standards for all Exchange-Traded Fund Shares on the Exchange, the Exchange further believes that such previously-listed products should no longer be required to comply with the previously-applicable continued listing requirements for such Exchange-Traded Funds.

The Exchange also proposes non-substantive amendments to include Exchange-Traded Fund Shares in other Exchange rules. Specifically, the Exchange proposes to amend Rule 5.3-E, concerning Corporate Governance and Disclosure Policies, and Rule 5.3-E(e), concerning Shareholder/Annual Meetings, to add Exchange-Traded Fund Shares to the enumerated derivative and special purpose securities that are subject to the respective Rules. Thus, Exchange-Traded Fund Shares would be subject to corporate governance, disclosure and shareholder/annual meeting requirements that are consistent with other derivative and special purpose securities enumerated in those Rules.

The Exchange believes that proposed Rule 5.2-E(j)(8) would promote transparency surrounding the listing process for Exchange-Traded Fund Shares.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Exchange-Traded Fund Shares in all trading sessions and to deter and detect violations of Exchange rules. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to Derivative Securities Products to monitor trading in Exchange-Traded Fund Shares.

Pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. As provided for under proposed Rule 5.2-E(j)(8)(e)(2), if the fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Rule 5.5-E(m).

In support of this proposal, the Exchange represents that:

- (1) the Exchange-Traded Fund Shares will conform to the initial and continued listing criteria under Rule 5.2-E(j)(8);

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

Proposed Discontinuance of Quarterly Reporting Obligation for Managed Fund Shares

In its order approving the Exchange’s proposal to adopt generic listing standards for Managed Fund Shares,¹⁶ the Commission noted that the Exchange has represented that it would “provide the Commission staff with a report each calendar quarter that includes the following information for issues of Managed Fund Shares listed during such calendar quarter under Commentary .01 to NYSE Arca Rule 8.600-E: (1) trading symbol and date of listing on the Exchange; (2) the number of active authorized participants and a description of any failure of an issue of Managed Fund Shares listed pursuant to Commentary .01 to Rule 8.600-E or of an authorized participant to deliver shares, cash, or cash and financial instruments in connection with creation or redemption orders; and (3) a description of any failure of an issue of Managed Fund Shares to comply with Rule 8.600-E.”¹⁷ The requirement to provide such quarterly reports is not separately specified in Rule 8.600-E.

¹⁶ See Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (the “Managed Fund Shares Approval Order”).

¹⁷ See Managed Fund Shares Approval Order at footnote 18.

The Exchange has provided such information to the Commission on a quarterly basis for two years. The Exchange believes such quarterly reports are no longer necessary in view of the requirements of Rule 6c-11(d), as adopted in the Rule 6c-11 Release, and now proposes to discontinue such reporting going forward. Rule 6c-11(d) includes specific ongoing reporting requirements for exchange-traded funds, including written agreements between an authorized participant and a fund allowing purchase or redemption of creation units, information regarding the baskets exchanged with authorized participants, and the identity of authorized participants transacting with a fund.¹⁸ The Commission has stated that the information required by Rule 6c-11(d) will provide the Commission's examination staff with information to determine compliance with Rule 6c-11 and applicable federal securities laws.¹⁹

¹⁸ Rule 6c-11(d), which sets forth recordkeeping requirements applicable to exchange-traded funds, provides that the exchange-traded fund must maintain and preserve for a period of not less than five years, the first two years in an easily accessible place: (1) All written agreements (or copies thereof) between an authorized participant and the exchange-traded fund or one of its service providers that allows the authorized participant to place orders for the purchase or redemption of creation units; (2) For each basket exchanged with an authorized participant, records setting forth: (i) The ticker symbol, CUSIP or other identifier, description of holding, quantity of each holding, and percentage weight of each holding composing the basket exchanged for creation units; (ii) If applicable, identification of the basket as a custom basket and a record stating that the custom basket complies with policies and procedures that the exchange-traded fund adopted pursuant to paragraph (c)(3) of Rule 6c-11; (iii) Cash balancing amount (if any); and (iv) Identity of authorized participant transacting with the exchange-traded fund.

¹⁹ In the Rule 6c-11 Release, the Commission stated that "requiring ETFs to maintain records regarding each basket exchanged with authorized participants will provide our examination staff with a basis to understand how baskets are being used by ETFs, particularly with respect to custom baskets. In order to provide our examination staff with detailed information regarding basket composition, however, we have modified rule 6c-11 to require the ticker symbol, CUSIP or other identifier, description of holding, quantity of each holding, and percentage weight of each holding composing the basket exchanged for creation units as part of the basket records, instead of the name and quantities of each position as proposed. We believe that this additional information will better enable our examination staff to evaluate compliance with the rule and other applicable provisions of the federal securities laws." See Rule 6c-11 Release, at 57195.

The Exchange therefore believes that the quarterly reports currently required pursuant to the Managed Fund Shares Approval Order are duplicative of the new Rule 6c-11(d) requirements. To avoid unnecessary overlap and potential inconsistency between the quarterly reports currently required under the Managed Fund Shares Approval Order and the reporting requirements of Rule 6c-11(d), and to avoid unnecessary, duplicative burdens on authorized participants and their firms in providing and maintaining information regarding creation and redemption activity, the Exchange proposes to discontinue the filing quarterly reports.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,²⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,²¹ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

By facilitating efficient procedures for listing ETFs that are permitted to operate in reliance on Rule 6c-11, the generic listing rules in proposed Rule 5.2-E(j)(8) described above are consistent with, and will further, the Commission's goals in adopting Rule 6c-11. In addition, by allowing Exchange-Traded Fund Shares to be listed and traded on the Exchange without a prior Commission approval order or notice of effectiveness pursuant to Section 19(b) of the Act, proposed Rule 5.2-E(j)(8) will significantly reduce the time frame and costs associated with bringing these securities to market, thereby promoting market competition among issuers of Exchange-Traded Fund Shares, to the benefit of the investing public.

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(5).

In addition, the proposed rule change would fulfill the intended objective of Rule 19b-4(e) under the Act by permitting Exchange-Traded Fund Shares that satisfy the proposed listing standards to be listed and traded without separate Commission approval.

To be listed under proposed Rule 5.2-E(j)(8), each series of Exchange-Traded Fund Shares must be eligible to operate in reliance on Rule 6c-11 under the 1940 Act and must satisfy the requirements of Rule 5.2-E(j)(8) upon initial listing and on a continuing basis. An issuer of such securities must notify the Exchange of any failure to comply with such requirements.

As provided in proposed Rule 5.2-E(j)(8)(e)(1), Exchange-Traded Fund Shares would be listed and traded on the Exchange subject to the requirement that the investment company issuing a series of Exchange-Traded Fund Shares is in compliance with the requirements of Rule 6c-11(c)²² under the 1940 Act on an initial and continued listing basis. This requirement will ensure that Exchange-listed Exchange-Traded Fund Shares continue to operate in a manner that fully complies with the portfolio transparency requirements of Rule 6c-11(c).

As provided in proposed Rule 5.2-E(j)(8)(e)(2) (Suspension of trading or removal), the Exchange will maintain surveillance procedures for securities listed under proposed Rule 5.2-E(j)(8) and will consider the suspension of trading in, and will commence delisting proceedings under Rule 5.5-E(m) of, a series of Exchange-Traded Fund Shares if the investment company notifies the Exchange that it does not comply with the requirements of Rule 6c-11(c) under the 1940 Act, or if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

As provided in proposed Rule 5.2-E(j)(8)(g), the Exchange will implement written surveillance procedures for Exchange-Traded Fund Shares. The Exchange represents that its

²² Rule 6c-11(c) sets forth certain conditions applicable to exchange-traded funds, including information required to be disclosed on the fund's website.

surveillance procedures are adequate to properly monitor the trading of the Exchange-Traded Fund Shares in all trading sessions and to deter and detect violations of Exchange rules.

Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which will include Exchange-Traded Fund Shares, to monitor trading in the Exchange-Traded Fund Shares.

Proposed Commentary .01 to Rule 5.2-E(j)(8) relates to Derivative Securities Products that have previously been approved for listing on the Exchange pursuant to the generic listing requirements specified in Rule 5.2-E(j)(3) or Commentary .01 to Rule 8.600-E, or pursuant to a proposed rule change filed with the Commission. Commentary .01 to proposed Rule 5.2-E(j)(8) will make clear that such funds will be deemed to be considered approved for listing under Rule 5.2-E(j)(8) if such funds are permitted to operate in reliance on Rule 6c-11 and any prior exemptive relief under the 1940 Act for such product has been rescinded. At such time, to maintain consistent listing standards for all Exchange-Traded Fund Shares listed on the Exchange, any requirements for listing as specified in Rule 5.2-E(j)(3) or Commentary .01 to Rule 8.600-E, or an approval order or notice of effectiveness of a separate proposed rule change that differ from the requirements of this Rule would no longer be applicable to such exchange-traded funds. The Exchange believes this Rule will streamline the listing process for such securities, consistent with the regulatory framework adopted in Rule 6c-11 under the 1940 Act.

The proposed addition of Exchange-Traded Fund Shares to the enumerated derivative and special purpose securities that are subject to the provisions of Rule 5.3-E (Corporate Governance and Disclosure Policies) and Rule 5.3-E (e) (Shareholder/Annual Meetings) would subject Exchange-Traded Fund Shares to the same requirements currently applicable to other

1940 Act-registered investment company securities (i.e., Investment Company Units, Managed Fund Shares and Portfolio Depositary Receipts).

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Exchange-Traded Fund Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Financial Industry Regulatory Authority, on behalf of the Exchange, or the regulatory staff of the Exchange, will communicate as needed regarding trading in Exchange-Traded Fund Shares with other markets that are members of the Intermarket Surveillance Group (“ISG”), including all U.S. securities exchanges on which the components are traded. In addition, the Exchange may obtain information regarding trading in Exchange-Traded Fund Shares from other markets that are members of the ISG, including all U.S. securities exchanges on which the components are traded, or with which the Exchange has in place a comprehensive surveillance sharing agreement.

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

With respect to the proposed discontinuance of quarterly reports currently required for Managed Fund Shares, the Exchange believes such quarterly reports are no longer necessary in view of the requirements of Rule 6c-11(d).²³ As noted above, Rule 6c-11(d) includes specific ongoing reporting requirements for exchange-traded funds, including written agreements between an authorized participant and a fund allowing purchase or redemption of creation units,

²³ See note 18, supra.

information regarding the baskets exchanged with authorized participants, and the identity of authorized participants transacting with a fund. The Commission has stated that the information required by Rule 6c-11(d) will provide the Commission's examination staff with information to determine compliance with Rule 6c-11 and applicable federal securities laws. The Exchange, therefore, believes it is necessary to discontinue the filing quarterly reports to avoid unnecessary overlap and potential inconsistency between the quarterly reports and the reporting requirements of Rule 6c-11(d), and to avoid unnecessary, duplicative burdens on authorized participants and their firms in providing and maintaining information regarding creation and redemption activity.

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

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

In accordance with Section 6(b)(8) of the Act,²⁴ the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed rule change would facilitate the listing and trading of Exchange-Traded Fund Shares and result in an efficient process surrounding the listing and trading of Exchange-Traded Fund Shares, which will enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange believes that this will reduce the time frame for bringing Exchange-Traded Fund Shares to market, thereby reducing the burdens on issuers and other market participants and promoting competition. In turn, the Exchange believes that the proposed change would make the process for listing Exchange-Traded Fund Shares more competitive by applying uniform listing standards with respect to Exchange-Traded Fund Shares.

²⁴ 15 U.S.C. 78f(b)(8).

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

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

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

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

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2019-81 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-2019-81. 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, D.C. 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-2019-81 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Jill M. Peterson
Assistant Secretary

²⁵ 17 CFR 200.30-3(a)(12).

