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SECURITIES AND EXCHANGE COMMISSION  
[Release No. 34-89274; File No. SR-NYSEArca-2020-62]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Schedule of Fees and Charges to Adopt Listing and Annual Fees for Actively Managed Proxy Shares Listed under Rule 8.601-E and Managed Portfolio Shares Listed under Rule 8.900-E  
July 9, 2020.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on June 30, 2020, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend its Schedule of Fees and Charges to adopt listing and annual fees for Actively Managed Proxy Shares listed under Rule 8.601-E and Managed Portfolio Shares listed under Rule 8.900-E. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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

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 to amend its Schedule of Fees and Charges to adopt listing and annual fees for Actively Managed Proxy Shares listed under recently adopted Rule 8.601-E and Managed Portfolio Shares listed under Rule 8.900-E (collectively, “Fund Shares”).

The proposed changes respond to the current extremely competitive environment for ETP listings in which issuers can readily favor competing venues or transfer their listings if they deem fee levels at a particular venue to be excessive, or discount opportunities available at other venues to be more favorable. As described below, the Exchange does not propose different pricing for Fund Shares. Rather, the Exchange proposes to incorporate Fund Shares into the existing listing and annual fees charged by the Exchange for Exchange Traded Products (“ETPs”).<sup>4</sup>

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<sup>4</sup> “Exchange Traded Products” are defined in footnote 3 of the current Schedule of Fees and Charges. The Exchange proposes to modify the definition to include Actively Managed Proxy Shares listed under Rule 8.601-E and Managed Portfolio Shares listed under Rule 8.900-E.

The proposed changes are designed to incentivize issuers to list new Fund Shares, transfer existing products to the Exchange, and maintain listings on the Exchange, which the Exchange believes will enhance competition both among issuers and listing venues, to the benefit of investors.

The Exchange proposes to implement the fee changes effective June 30, 2020.

#### Proposed Rule Change

On June 29, 2020, the Commission approved Rule 8.601-E regarding Exchange listing and trading of Active Proxy Portfolio Shares.<sup>5</sup> On April 15, 2020, the Commission issued a notice of filing and immediate effectiveness of the Exchange's proposed rule change to adopt NYSE Arca Rule 8.900-E regarding Exchange listing and trading of Managed Portfolio Shares.<sup>6</sup> In order to specify pricing for Fund Shares, the Exchange proposes the following changes to the Schedule of Fees and Charges.

#### Listing Fees

Listing fees for ETPs are set forth in section 5.a of the Schedule of Fees and Charges. Currently, with the exception of various products defined as "Generically-Listed Exchange Traded Products," the Exchange charges a \$7,500 listing fee. The Exchange currently does not charge a listing fee for listing products pursuant to Rule 19b-4(e) under the Act if they satisfy all criteria -- referred to as "generic" listing criteria -- in the applicable Exchange ETP rule.<sup>7</sup>

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<sup>5</sup> See Securities Exchange Act Release No. 89185 (June 29, 2020) (SR-NYSEArca-2019-95).

<sup>6</sup> See Securities Exchange Act Release No. 88648 (April 15, 2020), 85 FR 22200 (April 21, 2020) (SR-NYSEArca-2020-32).

<sup>7</sup> The Schedule of Fees and Charges refers to these as "Generically-Listed Exchange Traded Products." "Generically-Listed Exchange Traded Products" currently include Investment Company Units, Portfolio Depositary Receipts, Managed Fund Shares, Exchange-Traded Fund Shares listed under Rule 5.2-E(j)(8), and Currency Trust Shares that are listed on the Exchange pursuant to Rule 19b-4(e) under the Act, and for which a

The Exchange proposes to include Fund Shares in the definition of “Exchange Traded Products” in footnote 3 of the Schedule of Fees and Charges and as referenced in section 5.a thereto. Accordingly, because Fund Shares are not subject to Exchange listing pursuant to Rule 19b-4(e) under the Act and are not Generically-Listed Exchange Traded Products, Fund Shares will be subject to a listing fee of \$7,500.

The Exchange believes that, for purposes of listing fees, it would be appropriate to treat Fund Shares like other Exchange Traded Products that are not “Generically-Listed Exchange Traded Products” and charge a listing fee of \$7,500 because doing so would correlate the listing fee applicable to an issuer of ETPs to the resources required to list and maintain those ETPs on the Exchange. Specifically, Commentary .01 to Rule 8.601-E and Rule 8.900-E (b)(1) require that the Exchange file separate proposals under Section 19(b) of the Act before listing and trading a series of Active Proxy Portfolio Shares or Managed Portfolio Shares, respectively. As such, Fund Shares will require additional time and resources by Exchange staff to prepare and review rule filings and to communicate with issuers and Commission staff in connection therewith necessary for ETPs listed and traded pursuant to a rule change.

#### Annual Fees

Annual fees for ETPs are based on the number of shares outstanding per issuer.<sup>8</sup> Currently, as set forth in section 6.a of the Schedule of Fees and Charges, the Exchange charges the following annual fees for listed ETPs (including Exchange-Traded Fund Shares listed under

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proposed rule change pursuant to Section 19(b) of the Act is not required to be filed with the Commission.

<sup>8</sup> Annual fees are assessed each January in the first full calendar year following the year of listing. The aggregate total shares outstanding is calculated based on the total shares outstanding as reported by the fund issuer or fund “family” in its most recent periodic filing with the Commission or other publicly available information. Annual fees apply regardless of whether any of these funds are listed elsewhere.

Rule 5.2-E(j)(8) that track an Index), with the exception of Managed Fund Shares and Managed Trust Securities:

| <u>Number of Shares Outstanding (each issue)</u> | <u>Annual Fee</u> |
|--|-------------------|
| Less than 25 million                             | \$7,500           |
| 25 million up to 49,999,999                      | \$10,000          |
| 50 million up to 99,999,999                      | \$15,000          |
| 100 million up to 249,999,999                    | \$20,000          |
| 250 million up to 499,999,999                    | \$25,000          |
| 500 million and over                             | \$30,000          |

As set forth in section 6.b. of the Schedule of Fees and Charges, the Exchange charges the following annual fees for Managed Fund Shares, Managed Trust Securities and Exchange-Traded Fund Shares listed under Rule 5.2-E(j)(8) that do not track an Index:

| <u>Number of Shares Outstanding (each issue)</u> | <u>Annual Fee</u> |
|--|-------------------|
| Less than 25 million                             | \$10,000          |
| 25 million up to 49,999,999                      | \$12,500          |
| 50 million up to 99,999,999                      | \$20,000          |
| 100 million up to 249,999,999                    | \$25,000          |
| 250 million and over                             | \$30,000          |

The Exchange proposes to charge annual fees for Fund Shares that track how the Exchange currently charges annual fees for Managed Fund Shares, Managed Trust Securities and Exchange-Traded Fund Shares listed under Rule 5.2-E(j)(8) that do not track an Index. Accordingly, because Fund Shares, under the current Exchange listing rules, are more akin to Managed Fund Shares and Exchange-Traded Fund Shares that do not track an Index, the

Exchange proposes to charge the annual fees set forth in section 6.b of the Schedule of Fees and Charges.

The Exchange believes that charging Fund Shares the same current annual fees applicable to Managed Fund Shares, Managed Trust Securities and Exchange-Traded Fund Shares that do not track an Index would be appropriate because those relatively higher annual fees (compared to “Generically-Listed Exchange Traded Products”) better correlate with higher Exchange costs associated with similar actively managed products such as Managed Fund Shares, Managed Trust Securities, and Exchange-Traded Fund Shares that do not track an Index, including costs related to issuer services, listing administration, product development and regulatory oversight.

Finally, as noted above, the Exchange proposes to add Fund Shares to current footnote 3 which defines the term “Exchange Traded Products” for purposes of the Schedule of Fees and Charges.

Each of the proposed changes described above is not otherwise intended to address other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>10</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

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<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4) & (5).

### The Proposed Change is Reasonable

As discussed above, the Exchange operates in a highly competitive market for the listing of ETPs. Specifically, ETP issuers can readily favor competing venues or transfer listings if they deem fee levels at a particular venue to be excessive, or discount opportunities available at other venues to be more favorable. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>11</sup>

The Exchange believes that the ongoing competition among the exchanges with respect to new listings and the transfer of existing listings among competitor exchanges demonstrates that issuers can choose different listing markets in response to fee changes. Accordingly, competitive forces constrain exchange listing and annual fees. Stated otherwise, changes to exchange listing and annual fees can have a direct effect on the ability of an exchange to compete for new listings.

Given this competitive environment, the proposal represents a reasonable attempt to establish pricing for ETPs listed under Rule 8.601-E and Rule 8.900-E.

The Exchange currently does not charge listing fees for ETPs that satisfy generic listing criteria set forth in its rules. Products that list without a rule filing do not entail the additional time and resources required for ETPs that require a rule filing. However, as noted above, Commentary .01 to Rule 8.601-E and Rule 8.900-E (b)(1) require that the Exchange file separate

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<sup>11</sup> See Regulation NMS, 70 FR at 37499.

proposals under Section 19(b) of the Act before listing and trading a series of Active Proxy Portfolio Shares or Managed Portfolio Shares, respectively. As such, in contrast to ETPs for which the Exchange is not required to file a proposal under Section 19(b) of the Act, the listing and trading of Fund Shares will require additional time and resources by Exchange staff to prepare and review rule filings and to communicate with issuers and Commission staff in connection therewith necessary for Fund Shares listed and traded pursuant to a rule change. Accordingly, the Exchange believes the \$7,500 listing fee proposed for Fund Shares is reasonable in that it is the same as the listing fee for other ETPs that are not “Generically-Listed Exchange Traded Products.”

Annual fees for ETPs are based on the number of shares outstanding per issuer, and then are further differentiated based on whether the ETP is index based or not, with higher annual fees for ETPs that are not based on an index. The Exchange believes that it is reasonable to charge annual fees for Fund Shares based on that same differentiation. The Exchange believes that charging Fund Shares the current annual fees applicable to Managed Fund Shares and Managed Trust Securities, which are also actively managed products, as well as Exchange-Traded Fund Shares that do not track an index, would be reasonable because those annual fees better correlate with the higher Exchange costs for listing and trading Fund Shares, including costs related to issuer services, listing administration, product development and regulatory oversight.

#### The Proposal is an Equitable Allocation of Fees

The Exchange believes its proposal equitably allocates its fees among its market participants. In the prevailing competitive environment, issuers can readily favor competing venues or transfer listings if they deem fee levels at a particular venue to be excessive, or discount opportunities available at other venues to be more favorable.

The Exchange believes that, for purposes of listing fees, it would be appropriate to treat Fund Shares like other Exchange Traded Products that are not “Generically-Listed Exchange Traded Products” and charge a listing fee of \$7,500 because doing so would correlate the listing fee applicable to an issuer of ETPs to the resources required to list and maintain those ETPs on the Exchange. Fund Shares will incur additional time and resources required by Exchange staff to prepare and review rule filings and to communicate with issuers and Commission staff in connection therewith necessary for ETPs listed and traded pursuant to a rule change.

The proposed annual fees for Fund Shares are equitable because the proposed increased annual fees would apply uniformly to all issuers. Moreover, the proposed fees would be equitably allocated among issuers because issuers would continue to qualify for the annual fee based on the number of shares outstanding and under criteria applied uniformly to all such issuers.

The proposal neither targets nor will it have a disparate impact on any particular category of market participant. The proposed listing and annual fees would be applicable to all existing and potential issuers of Fund Shares uniformly and in equal measure.

#### The Proposal is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, issuers are free to list elsewhere if they believe that alternative venues offer them better value.

The Exchange believes it is not unfairly discriminatory to apply to Fund Shares the same fees applicable to Managed Fund Shares, Managed Trust Securities and Exchange -Traded Fund Shares that do not track an index because the proposed fees would be offered on an equal basis to all issuers listing Fund Shares on the Exchange. Moreover, the proposed listing and annual fees

for Fund Shares would apply to issuers in the same manner as the current listing and annual fees for ETPs, including Managed Fund Shares, Managed Trust Securities and Exchange-Traded Fund Shares that do not track an index.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing 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,<sup>12</sup> the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage competition because it would establish listing and annual fees for Fund Shares, thereby encouraging issuers to develop and list additional products on the Exchange that the Exchange believes will enhance competition both among issuers and listing venues, to the benefit of investors. The proposal also ensures that the fees charged by the Exchange accurately reflect the services provided and benefits realized by listed issuers. The market for listing services is extremely competitive. Issuers have the option to list their securities on these alternative venues based on the fees charged and the value provided by each listing exchange. Because issuers have a choice to list their securities on a different national securities exchange, the Exchange does not believe that the proposed fee changes impose a burden on competition.

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<sup>12</sup> 15 U.S.C. 78f(b)(8).

*Intramarket Competition.* The proposed changes are designed to attract additional listings to the Exchange by establishing listing and annual fees for ETPs listed under new rules. The Exchange believes that the proposed changes would continue to incentivize issuers to develop and list new products, transfer existing products to the Exchange, and maintain listings on the Exchange. The proposed fees would apply to all issuers equally, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

*Intermarket Competition.* The Exchange operates in a highly competitive listings market in which issuers can readily choose alternative listing venues. In such an environment, the Exchange must adjust its fees and discounts to remain competitive with other exchanges competing for the same listings. Because competitors are free to modify their own fees and discounts in response, and because issuers may readily adjust their listing decisions and practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition. As such, the proposal is a competitive proposal designed to enhance pricing competition among listing venues and implement pricing for Fund Shares to reflect the revenue and expenses associated with listing on the Exchange.

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

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

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>13</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>14</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>15</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

### IV. Solicitation of Comments

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

#### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2020-62 on the subject line.

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(2).

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

Paper comments:

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

All submissions should refer to File Number SR-NYSEArca-2020-62. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2020-62 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.<sup>16</sup>

J. Matthew DeLesDernier,

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<sup>16</sup> 17 CFR 200.30-3(a)(12).

Assistant Secretary.

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