

submissions should refer to file number SR-EMERALD-2023-19 and should be submitted on or before October 25, 2023. Rebuttal comments should be submitted by November 8, 2023.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,⁵⁷ that File No. SR-EMERALD-2023-19, be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁸

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 3498663; File No. SR-NYSEARCA-2023-67]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List and Trade Shares of the American Century Focused Dynamic Growth ETF and the American Century Focused Large Cap Value ETF Under NYSE Arca Rule 8.601-E (Active Proxy Portfolio Shares)

September 29, 2023.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 (“Act”) ² and Rule 19b-4 thereunder, ³ notice is hereby given that, on September 28, 2023, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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 list and trade shares of the American Century Focused Dynamic Growth ETF and the

American Century Focused Large Cap Value ETF. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included 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 has adopted NYSE Arca Rule 8.601-E for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges (“UTP”), of Active Proxy Portfolio Shares, which are securities issued by an actively managed open-end investment management company.⁴

⁴ See Securities Exchange Act Release No. 89185 (June 29, 2020), 85 FR 40328 (July 6, 2020) (SR-NYSEArca-2019-95). Rule 8.601-E(c)(1) provides that “[t]he term ‘Active Proxy Portfolio Share’ means a security that (a) is issued by 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 consistent with the Investment Company’s investment objectives and policies; (b) is issued in a specified minimum number of shares, or multiples thereof, in return for a deposit by the purchaser of the Proxy Portfolio or Custom Basket, as applicable, and/or cash with a value equal to the next determined net asset value (‘NAV’); (c) when aggregated in the same specified minimum number of Active Proxy Portfolio Shares, or multiples thereof, may be redeemed at a holder’s request in return for the Proxy Portfolio or Custom Basket, as applicable, and/or cash to the holder by the issuer with a value equal to the next determined NAV; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.” Rule 8.601-E(c)(2) provides that “[t]he term ‘Actual Portfolio’ means the identities and quantities of the securities and other assets held by the Investment Company that shall form the basis for the Investment Company’s calculation of NAV at the end of the business day.” Rule 8.601-E(c)(3) provides that “[t]he term ‘Proxy Portfolio’ means a specified portfolio of securities, other financial instruments and/or cash designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such

Commentary .01 to Rule 8.601-E requires the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Active Proxy Portfolio Shares on the Exchange. Therefore, the Exchange is submitting this proposal in order to list and trade shares (“Shares”) of the American Century Focused Dynamic Growth ETF and the American Century Focused Large Cap Value ETF (each a “Fund” and, collectively, the “Funds”) under Rule 8.601-E.⁵

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-E⁶ and for which a “Disclosed Portfolio” is required to be disseminated at least once daily,⁷ the portfolio for an issue of

series.” Rule 8.601-E(c)(4) provides that the term “Custom Basket” means a portfolio of securities that is different from the Proxy Portfolio and is otherwise consistent with the exemptive relief issued pursuant to the Investment Company Act of 1940 applicable to a series of Active Proxy Portfolio Shares.

⁵ Pursuant to Commission approval, the Funds are currently listed on Cboe BZX Exchange, Inc. (“BZX”) and utilize the Precidian ActiveShares methodology (the “Precidian Model”). See Securities Exchange Act Release No. 88175 (February 12, 2020), 85 FR 9494 (February 19, 2020) (SR-CboeBZX-2019-057) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2 thereto, To List and Trade Shares of the American Century Focused Dynamic Growth ETF and American Century Focused Large Cap Value ETF Under BZX Rule 14.11(k)).

⁶ 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 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).

⁷ NYSE Arca Rule 8.600-E(c)(2) defines the term “Disclosed Portfolio” as the identities and

⁵⁷ 15 U.S.C. 78s(b)(3)(C).

⁵⁸ 17 CFR 200.30-3(a)(57).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 Investment Company Act of 1940 (the “1940 Act”).⁸ 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 redemption may be exchanged for a Proxy Portfolio or Custom Basket, as applicable, and/or cash with a value equal to the next-determined 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. As set forth in NYSE Arca Rule 8.601–E(d)(2)(B)(ii), for Active Proxy Portfolio Shares using a Custom Basket, each Business Day,⁹ before the opening of trading in the Core Trading Session (as defined in NYSE Arca Rule 7.34–E(a)), the Investment Company shall make publicly available on its website the composition of any Custom Basket transacted on the previous Business Day, except a Custom Basket that differs

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.

⁸ A mutual fund is required to file with the Commission its complete portfolio schedules for the second and fourth fiscal quarters on Form N–CSR under the 1940 Act. Information reported on Form N–PORT for the third month of a fund’s fiscal quarter will be made publicly available 60 days after the end of a fund’s fiscal quarter. Form N–PORT requires reporting of a fund’s complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a series of Active Proxy Portfolio Shares’ Statement of Additional Information (“SAI”), its Shareholder Reports, its Form N–CSR, filed twice a year, and its Form N–CEN, filed annually. A series of Active Proxy Portfolio Shares’ SAI and Shareholder Reports will be available free upon request from the Investment Company, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission’s website at www.sec.gov.

⁹ “Business Day” is defined to mean any day that the Exchange is open, including any day when the Fund satisfies redemption requests as required by Section 22(e) of the 1940 Act.

from the applicable Proxy Portfolio only with respect to cash.

The Commission has previously approved¹⁰ and noticed for immediate effectiveness¹¹ the listing and trading

¹⁰ See Securities Exchange Act Release Nos. 89185 (June 29, 2020), 85 FR 40328 (July 6, 2020) (SR–NYSEArca–2019–95) (Notice of Filing of Amendment No. 6 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 6, to Adopt NYSE Arca Rule 8.601–E to Permit the Listing and Trading of Active Proxy Portfolio Shares and To List and Trade Shares of the Natixis U.S. Equity Opportunities ETF Under Proposed NYSE Arca Rule 8.601–E); 89192 (June 30, 2020), 85 FR 40699 (July 7, 2020) (SR–NYSEArca–2019–96) (Notice of Filing of Amendment No. 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 5, to List and Trade Two Series of Active Proxy Portfolio Shares Issued by the American Century ETF Trust under NYSE Arca Rule 8.601–E); 89191 (June 30, 2020), 85 FR 40358 (July 6, 2020) (SR–NYSEArca–2019–92) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, to List and Trade Four Series of Active Proxy Portfolio Shares Issued by T. Rowe Price Exchange-Traded Funds, Inc. under NYSE Arca Rule 8.601–E); 89438 (July 31, 2020), 85 FR 47821 (August 6, 2020) (SR–NYSEArca–2020–51) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of Natixis Vaughan Nelson Select ETF and Natixis Vaughan Nelson MidCap ETF under NYSE Arca Rule 8.601–E); 91266 (March 5, 2021), 86 FR 13930 (March 11, 2021) (SR–NYSEArca–2020–104) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the Stance Equity ESG Large Cap Core ETF Under NYSE Arca Rule 8.601–E).

¹¹ See, e.g., Securities Exchange Act Release Nos. 92104 (June 3, 2021), 86 FR 30635 (June 9, 2021) (NYSEArca–2021–46) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to List and Trade Shares of the Nuveen Santa Barbara Dividend Growth ETF, Nuveen Small Cap Select ETF, and Nuveen Winslow Large-Cap Growth ESG ETF Under NYSE Arca Rule 8.601–E (Active Proxy Portfolio Shares)); 92958 (September 13, 2021), 86 FR 51933 (September 17, 2021) (NYSEArca–2021–77) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List and Trade Shares of the Nuveen Growth Opportunities ETF Under NYSE Arca Rule 8.601–E (Active Proxy Portfolio Shares)); 93264 (October 6, 2021), 86 FR 56989 (October 13, 2021) (SR–NYSEArca–2021–84) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List and Trade Shares of the Schwab Ariel ESG ETF Under NYSE Arca Rule 8.601–E (Active Proxy Portfolio Shares)); 94486 (March 22, 2022), 87 FR 17351 (March 28, 2022) (SR–NYSEArca–2022–14) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to List and Trade Shares of the Columbia Seligman Semiconductor and Technology ETF Under NYSE Arca Rule 8.601 (Active Proxy Portfolio Shares)); 94908 (May 13, 2022), 87 FR 30524 (May 19, 2022) (SR–NYSEArca–2022–28) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to List and Trade Shares of the Principal Real Estate Active Opportunities ETF Under NYSE Arca Rule 8.601 (Active Proxy Portfolio Shares)); 94902 (May 12, 2022), 87 FR 30286 (May 18, 2022) (SR–NYSEArca–2022–29) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to List and Trade Shares of the IQ Winslow Large Cap Growth ETF and IQ Winslow Focused Large Cap Growth ETF Under NYSE Arca Rule 8.601–E (Active Proxy Portfolio Shares)); and 97645 (June 2, 2023), 88 FR 37588 (SR–NYSEArca–2023–38) (Notice of Filing

on the Exchange of series of Active Proxy Portfolio Shares under NYSE Arca Rule 8.601–E.

The Shares of each Fund will be issued by American Century ETF Trust (the “Trust”), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.¹² American Century Investment Management, Inc. will be the investment adviser to each Fund (the “Adviser”). Foreside Fund Services, LLC will serve as the distributor (the “Distributor”) of each of the Fund’s Shares.

Commentary .04 to NYSE Arca 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, Proxy Portfolio, and/or Custom Basket, as applicable. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company’s Actual Portfolio, Proxy Portfolio, and/or

and Immediate Effectiveness of Proposed Rule Change To List and Trade Shares of the Natixis Loomis Sayles Focused Growth ETF Under NYSE Arca Rule 8.601–E (Active Proxy Portfolio Shares)).

¹² The Trust is registered under the 1940 Act. On June 18, 2018, the Trust filed a registration statement on Form N–1A relating to the Funds (File No. 811–23305) (the “Registration Statement”). The Commission issued an order granting exemptive relief to the Trust (“Exemptive Order”) under the 1940 Act on May 12, 2020 (Investment Company Act Release No. 33862). The Exemptive Order was granted with respect to the Trust’s application for exemptive relief (the “Application”) (Investment Company Act Release No. 33841) (File No. 812–15082). Each Fund’s final, definitive prospectus, dated as of January 1, 2023, was filed pursuant to Rule 485B of the Securities Act of 1933, and contains the current methodology of each Fund (the “Final Prospectus”). A supplement to the Final Prospectus containing the change to the methodology used by each Fund from the Precidian Model to the NYSE AMS proxy portfolio methodology, as described herein, was filed on August 22, 2023, pursuant to Rule 497(e) of the Securities Act of 1933 (the “Supplement”). Pursuant to the Supplement, the change to the methodology will be implemented effective October 23, 2023. As part of the transition, effective October 23, 2023, the listing exchange for the Funds will change from BZX to the Exchange. Investments made by the Funds will comply with the conditions set forth in the Application and the Exemptive Order. The description of each Fund and the Shares contained herein are based on the Registration Statement, the Final Prospectus and the Supplement. The Exchange will not commence trading in the Shares of each Fund until the Supplement is effective.

Custom Basket, as applicable, or has access to non-public information regarding the Investment Company's Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, 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, Proxy Portfolio, and/or Custom Basket, as applicable, or changes thereto. Commentary .04 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Rule 5.2–E(j)(3); however, 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.¹³ Commentary .04 is also similar to Commentary .06 to Rule 8.600–E related to Managed Fund Shares, except that 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, Proxy Portfolio, and/or Custom Basket, as applicable, or changes thereto, and not just to the underlying portfolio, as is the case with Managed Fund Shares.

In addition, 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, Proxy Portfolio, or Custom Basket, as applicable, 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, Proxy Portfolio, or Custom Basket, as applicable, 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 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, Proxy Portfolio, or Custom Basket, as applicable.

The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer. The Adviser 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 each Fund's Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable.

In the event (a) the Adviser becomes registered as a broker-dealer or becomes 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 and/or changes to each Fund's Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding each Fund's Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or changes thereto. Any person related to the Adviser or each Fund who makes decisions pertaining to each Fund's Actual Portfolio, Proxy Portfolio, or Custom Basket, as applicable, or has access to non-public information regarding each Fund's Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or changes thereto are subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding each Fund's Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or changes thereto.

In addition, any person or entity, including any service provider for each Fund, who has access to non-public information regarding each Fund's Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or

changes thereto, will be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding each Fund's Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, 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 each Fund's Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable.

Description of the Funds

According to the Registration Statement, the Adviser will identify a Proxy Portfolio for each Fund that is designed to replicate the daily performance of each Fund's Actual Portfolio and will only include securities and investments in which each Fund may invest. While each Fund's Proxy Portfolio and Actual Portfolio will hold some of the same securities, the Proxy Portfolio and Actual Portfolio may not include identical securities.

The composition of the Proxy Portfolio will be published on the Funds' website (www.americancenturyetfs.com) each Business Day before the commencement of trading of each Fund's Shares. The Funds' website will include the following information for each portfolio holding in the Proxy Portfolio: (1) ticker symbol; (2) CUSIP or other identifier; (3) description of holding; (4) quantity of each security or other asset held; and (5) percentage weight of the holding in the Proxy Portfolio. The Proxy Portfolio will be reconstituted daily, and the Adviser will not make intra-day changes to the Proxy Portfolio except to correct errors in the published Proxy Portfolio.

Each Fund will, at the end of each trading day, calculate the percentage weight overlap between the holdings of its Proxy Portfolio and the Actual Portfolio (the “Proxy Overlap”) that formed the basis for each Fund's calculation of NAV at the end of the prior Business Day by taking the lesser weight of each asset held in common between the Actual Portfolio and the Proxy Portfolio and adding the totals.

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

¹³ 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 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.

Application and Exemptive Order.¹⁴ Any foreign common stocks held by each 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.

American Century Focused Dynamic Growth ETF

According to the Registration Statement, the Fund’s investment objective is long-term capital growth. The Fund will, under Normal Market Conditions,¹⁵ invest primarily in U.S. exchange-listed equity securities. The Adviser looks for stocks of companies it believes will increase in value over time. In implementing this strategy, the Adviser makes investment decisions based primarily on its analysis of individual companies, rather than on broad economic forecasts. Management of the Fund is based on the belief that, over the long term, stock price movements follow growth in earnings, revenues and/or cash flow. The Adviser uses a variety of analytical research tools and techniques to identify the stocks of companies that meet the Fund’s investment criteria. In addition to investing primarily in U.S. exchange-listed equity securities, the Fund may also invest in exchange-traded funds, exchange-listed ADRs, U.S. exchange-listed equity futures contracts, and U.S. exchange-listed equity index futures contracts. The Fund may also hold cash and cash equivalents without limitation.

¹⁴ Pursuant to the Application and Exemptive Order, the permissible investments for each Fund include only the following instruments: exchange-traded funds, exchange-traded notes, exchange-traded common stocks, exchange-traded preferred stocks, exchange-traded American Depositary Receipts, exchange-traded real estate investment trusts, exchange-traded commodity pools, exchange-traded metal trusts, exchange-traded currency trusts and exchange-traded futures that trade contemporaneously with each Fund’s shares. In addition, each Fund may hold cash and cash equivalents (short-term U.S. Treasury securities, government money market funds, and repurchase agreements). Pursuant to the Application and Exemptive Order, neither Fund will not hold short positions or invest in derivatives other than U.S. exchange-traded futures, will not borrow for investment purposes, and will not purchase any securities that are illiquid investments at the time of purchase.

¹⁵ The term “Normal Market Conditions” includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

American Century Focused Large Cap Value ETF

According to the Registration Statement, the Fund’s investment objective is long-term capital growth. The Fund will, under Normal Market Conditions, invest primarily in U.S. exchange-listed equity securities. The Adviser looks for stocks of companies whose stock price may not reflect the company’s value. The Adviser attempts to purchase the stocks of these undervalued companies and hold each stock until the price has increased to, or is higher than, a level the Adviser believes more accurately reflects the fair value of the company. The Adviser may sell stocks from the Fund’s portfolio if it believes a stock no longer meets its valuation criteria, if a stock’s risk parameters outweigh its return opportunity, more attractive alternatives are identified, or specific events alter a stock’s prospects. In addition to investing primarily in U.S. exchange-listed equity securities, the Fund may also invest in exchange-traded funds, exchange-listed ADRs, U.S. exchange-listed equity futures contracts, and U.S. exchange-listed equity index futures contracts. The Fund may also hold cash and cash equivalents without limitation.

Investment Restrictions

Shares of each Fund will conform to the initial and continued listing criteria under Rule 8.601–E. Each Fund’s holdings will be limited to and consistent with permissible holdings as described in the Application and Exemptive Order and all requirements in the Application and Exemptive Order.¹⁶

Each Fund’s investments, including derivatives, will be consistent with its investment objectives and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, each Fund’s investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2X or –3X) of each Fund’s primary broad-based securities benchmark index (as defined in Form N–1A).¹⁷

Purchases and Redemptions

According to the Registration Statement, the Trust will issue and sell Shares of each Fund only in specified minimum size “Creation Units” on a continuous basis through the Distributor at their NAV next determined after receipt of an order, on any Business

Day, in proper form. The NAV of each Fund’s Shares will be calculated each Business Day as of the close of regular trading on the Exchange, ordinarily 4:00 p.m. Eastern Time (“E.T.”). A Creation Unit will generally consist of at least 5,000 Shares.

According to the Registration Statement, Shares of each Fund will be purchased and redeemed in Creation Units. Creation Units will generally be purchased in-kind through the deposit of a designated portfolio of securities (the “Deposit Securities”), which will typically replicate the Proxy Portfolio, plus the “Cash Component,” which is an amount equal to the difference between the NAV of each Fund’s shares (per Creation Unit) and the market value of the Deposit Securities or “Cash Deposit” (as defined below), as applicable. The Cash Component serves the function of compensating for any differences between the NAV per Creation Unit and the market value of the Deposit Securities or Cash Deposit, as applicable. The Cash Deposit is a “cash in lieu” amount that the Trust may permit or require to be added to the Cash Component to replace any Deposit Security. The names and quantities of the instruments that constitute the Deposit Securities will be the same as the Proxy Portfolio, except to the extent that a Fund requires purchases and redemptions to be made entirely or in part on a cash basis. Together, the Deposit Securities or Cash Deposit, as applicable, and the Cash Component constitute the “Fund Deposit,” which represents the minimum initial and subsequent investment amount for a Creation Unit of each Fund.

Creation Units of each Fund may be purchased and/or redeemed entirely or partially for cash in the Trust’s discretion. When full or partial cash purchases or redemptions of Creation Units are available or specified for a Fund, they will be effected in essentially the same manner as in-kind purchases or redemptions thereof.¹⁸

The identity and number of shares comprising a Creation Unit may change from time to time. Each Fund, through the National Securities Clearing Corporation (the “NSCC”), will make available on each Business Day, immediately prior to the opening of business on the Exchange, the list of the names and the required number of shares of each Deposit Security or the required amount of Cash Deposit, as

¹⁸ The Adviser represents that, to the extent the Trust effects the creation or redemption of Shares in cash on any given day, such transactions will be effected in the same manner for all Authorized Participants (as defined below) placing trades with each Fund on that day.

¹⁶ See *supra*, note 14.

¹⁷ Each Fund’s broad-based securities benchmark index is identified in its current Registration Statement.

applicable, to be included in the Fund Deposit. The published Fund Deposit will apply until such time as the next-announced composition of the Deposit Securities is made available, and there will be no intra-day changes except to correct errors in the published Fund Deposit. The Fund Deposit 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. The identity of the Fund Securities that will be applicable to redemption requests received in proper form on a Business Day will also be made available prior to the opening of business on the Exchange on each Business Day.

All orders to purchase or redeem Creation Units must be placed with the Distributor by or through an Authorized Participant, who may engage in creation or redemption transactions directly with each Fund.¹⁹ Orders to purchase or redeem Creation Units will be accepted until the "Order Cut-Off Time," generally 2:00 p.m. E.T., on each Business Day in order to receive the NAV of Shares of each Fund on that Business Day. The date on which an order to purchase or redeem Creation Units is placed is referred to as 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.americancentiryetfs.com) 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: (1) the prior Business Day's NAV; (2) the prior Business Day's "Closing Price" or "Mid-Point of the Bid/Ask Price at Close";²⁰ and (3) a calculation of the premium/discount of such Closing Price or Mid-Point of the Bid/Ask Price at Close against such NAV.²¹ 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 each Fund as may be required for other ETFs under Rule 6c-11 under the 1940 Act, as amended. The Funds' website will also disclose the information required under Rule 8.601-E(c)(3).²² The Funds' website and information will be publicly available at no charge.

The identity and quantity of investments in the Proxy Portfolio for each Fund will be publicly available on the Funds' website before the commencement of trading in Shares of each Fund on each Business Day. The website will also include information relating to the Proxy Overlap, as discussed above. With respect to each Custom Basket utilized by each Fund, each Business Day, before the opening of trading in the Core Trading Session (as defined in NYSE Arca Rule 7.34-E(a)), the Funds' website will also include the composition of any Custom Basket transacted on the previous Business Day, except a Custom Basket that differs from the Proxy Portfolio only with respect to cash.

Typical mutual fund-style annual, semi-annual and quarterly disclosures contained in each Fund's Commission filings will be provided on the Funds' website on a current basis.²³ Thus, each Fund will publish the portfolio contents of its Actual Portfolio on a periodic basis, and no less than 60 days after the end of every fiscal quarter.

Investors can also obtain each Fund's SAI, Shareholder Reports, Form N-CSR, N-PORT, and Form N-CEN. The prospectus, SAI, and Shareholder Reports are available free upon request, and those documents and the Form N-CSR, N-PORT, and Form N-CEN may be viewed on-screen or downloaded from the Commission's website. The Exchange also notes that pursuant to the Application, each Fund must comply with Regulation Fair Disclosure, which prohibits selective disclosure of any material non-public information.

Information regarding the market price of Shares of each Fund and trading volume in Shares of each Fund, will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information for the Shares of each Fund will be published daily in the financial section of newspapers.

Quotation and last sale information for the Shares of each Fund and U.S. exchange-traded instruments (excluding futures contracts) will be available via the Consolidated Tape Association ("CTA") high-speed line, from the exchanges on which such securities trade, or through major market data vendors or subscription services. Quotation and last sale information for futures contracts will be available from the exchanges on which they trade. Intraday price information for all exchange-traded instruments, which include all eligible instruments except cash and cash equivalents, will be available from the exchanges on which they trade, or through major market data vendors or subscription services. Intraday price information for cash equivalents is available through major market data vendors, 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 each Fund.²⁴ Trading in Shares of each 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 of each Fund inadvisable. Trading in the Shares of each Fund will be subject to NYSE Arca Rule 8.601-E(d)(2)(D), which sets forth circumstances under which Shares of each Fund will be halted.

Specifically, 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;

¹⁹ According to the Registration Statement, an "Authorized Participant" is (i) a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the NSCC or (ii) a DTC Participant, that has executed an AP Agreement with the Distributor.

²⁰ The records relating to Bid/Ask Prices will be retained by each Fund or its 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 each 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 of each Fund is the official closing price on the Exchange.

²¹ The "premium/discount" refers to the premium or discount to the NAV at the end of a trading day and will be calculated based on the last Bid/Ask Price on a given trading day.

²² See note 4, *supra*. 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 1940 Act applicable to such series, including the following, to the extent applicable: (i) Ticker symbol; (ii) CUSIP or other identifier; (iii) Description of holding; (iv) Quantity of each security or other asset held; and (v) Percentage weighting of the holding in the portfolio.

²³ See note 8, *supra*.

²⁴ See NYSE Arca Rule 7.12-E.

or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. 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 of each Fund to be equity securities, thus rendering trading in the Shares of each Fund subject to the Exchange's existing rules governing the trading of equity securities. Shares of each Fund 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 of each Fund will conform to the initial and continued listing criteria under NYSE Arca Rule 8.601-E. The Exchange has appropriate rules to facilitate trading in the Shares of each Fund 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 Rule 8.601-E(d)(1)(B), the Exchange, prior to commencement of trading in the Shares of each Fund, will obtain a representation from the Trust that (i) the NAV per Share of each Fund will be calculated daily, (ii) the NAV, Proxy Portfolio, and the Actual Portfolio for each Fund will be made publicly available to all market participants at the same time, and (iii) the Trust and any person acting on behalf of the Trust will comply with Regulation Fair Disclosure under the Act, including with respect to any Custom Basket.

With respect to Active Proxy Portfolio Shares, 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 of each Fund 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.²⁵ The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares of each Fund in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

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.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares of each Fund 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 underlying exchange-traded instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and underlying 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.²⁶

The Adviser will make available daily to FINRA and the Exchange the Actual Portfolio of the Fund, upon request, as necessary to assist with the performance of the surveillances and investigations referred to above.

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

Commentary .03 to NYSE Arca Rule 8.601-E provides that the Exchange will

implement and maintain written surveillance procedures applicable to 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 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 issuer compliance with the requirements of 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 Rule 8.601-E. The Exchange notes that Commentary .01 to Rule 8.601-E requires 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 Rule 8.601-E.

With respect to each Fund, all statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares of each Fund on the Exchange. The Exchange will obtain a representation from the Trust, prior to commencement of trading in the Shares of each Fund, that it will advise the Exchange of any

²⁵ 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.

²⁶ For a list of the current members of ISG, see www.isgportal.org.

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,²⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁸ 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.²⁹

With respect to the proposed listing and trading of Shares of each Fund, the Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares of each Fund 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.³⁰

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares of each Fund 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 in the Shares of each Fund and underlying exchange-traded instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares of each Fund and underlying 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 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 of each Fund in a manner that will not lead to significant deviations between the Shares of each Fund's Closing Price or Bid/Ask Price and NAV.

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, each 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).

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 Trust that the NAV per Share of each Fund will be calculated daily and that the NAV, Proxy Portfolio, Actual Portfolio and/or Custom Basket, as applicable, for each Fund will be made available to all market participants at the same time. Investors can obtain each Fund's SAI, shareholder reports, and its Form N–CSR, Form N–PORT, and Form N–CEN. Each Fund's SAI and shareholder reports will be available free upon request, 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.

Commentary .03 to NYSE Arca Rule 8.601–E provides that the Exchange will implement and maintain written surveillance procedures applicable to 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 each Fund, the Adviser will make available daily to FINRA and the Exchange the portfolio holdings of each Fund upon request as necessary to facilitate the performance of the surveillances and investigations referred to above.

The Exchange will utilize its existing procedures to monitor compliance with the requirements of 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 Trust, upon initial listing and periodically thereafter, a representation that it is in compliance with Rule 8.601–E. The Exchange notes that Commentary .01 to Rule 8.601–E requires the issuer of Shares of each Fund 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 the issuer to represent that it 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 Rule 8.601–E.

In addition, with respect to each Fund, a large amount of information will be publicly available regarding each Fund and the Shares of each Fund, thereby promoting market transparency.

Quotation and last sale information for the Shares of each Fund and U.S. exchange-traded instruments (excluding futures contracts) will be available via the CTA high-speed line, from the exchanges on which such securities trade, or through major market data vendors or subscription services. Quotation and last sale information for futures contracts will be available from the exchanges on which they trade. Intraday price information for all exchange-traded instruments, which include all eligible instruments except cash and cash equivalents, will be available from the exchanges on which they trade, or through major market data vendors or subscription services. Intraday price information for cash equivalents is available through major market data vendors, subscription services and/or pricing services.

The Funds' website will include a form of the prospectus that may be

²⁷ 15 U.S.C. 78f(b).

²⁸ 15 U.S.C. 78f(b)(5).

²⁹ The Exchange represents that, for initial and continued listing, each Fund will be in compliance with Rule 10A–3 under the Act, as provided by NYSE Arca Rule 5.3–E.

³⁰ See note 14, *supra*.

downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis. Trading in Shares of each 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 of each Fund inadvisable. Trading in the Shares of each Fund will be subject to NYSE Arca Rule 8.601–E(d)(2)(D), which sets forth circumstances under which Shares of each Fund will 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 of each Fund. 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 of each Fund on each Business Day. The Shares of each Fund will conform to the initial and continued listing criteria under Rule 8.601–E.³¹

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.³² 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 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 each 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).

As noted above, the Exchange has in place surveillance procedures relating to

trading in the Shares of each Fund 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, investors will have ready access to information regarding quotation and last sale information for the Shares of each Fund.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change would permit listing and trading of additional actively-managed ETFs that have characteristics different from existing actively-managed and index ETFs 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.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³³ and Rule 19b–4(f)(6) thereunder.³⁴ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)³⁵ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested

that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that the Commission has approved and noticed for immediate effectiveness proposed rule changes to permit listing and trading on the Exchange of Active Proxy Portfolio Shares similar to the Funds,³⁶ and this proposal raises no novel legal or regulatory issues. Thus, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.³⁷

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.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR–NYSEARCA–2023–67 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–2023–67. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent

³⁶ See *supra* notes 10 and 11.

³⁷ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³¹ See note 4, *supra*.

³² See note 14, *supra*.

³³ 15 U.S.C. 78s(b)(3)(A)(iii).

³⁴ 17 CFR 240.19b–4(f)(6).

³⁵ 17 CFR 240.19b–4(f)(6)(iii).

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEARCA-2023-67 and should be submitted on or before October 25, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁸

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-22039 Filed 10-3-23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98585; File No. SR-MEMX-2023-25]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Fee Schedule To Establish an Options Regulatory Fee

September 28, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 27, 2023, MEMX LLC ("MEMX" 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 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 is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members³ (the "Fee Schedule") pursuant to Exchange Rules 15.1(a) and (c) to adopt an Options Regulatory Fee ("ORF") that would automatically sunset on September 30, 2024. The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal on September 27, 2023. The text of the proposed rule change is provided in Exhibit 5.

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 Exchange 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 these 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 aspects of such statements.

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

1. Purpose

In preparation for the launch of the Exchange's options market ("MEMX Options"),⁴ the Exchange proposes to establish an ORF in the amount of \$0.0015 per contract side. The amount of the proposed fee is based on historical industry volume, projected volumes on the Exchange, and projected Exchange regulatory costs. The Exchange's proposed ORF should balance the Exchange's regulatory revenue against the anticipated regulatory costs. As discussed more fully below, the Exchange proposes that the ORF will automatically sunset on September 30, 2024.

The per-contract ORF will be collected by the Options Clearing

Corporation ("OCC") on behalf of the Exchange for each options transaction, cleared or ultimately cleared by an Exchange member in the "customer" range, regardless of the exchange on which the transaction occurs. The ORF is collected from either: (1) a Member that was the ultimate clearing firm⁵ for the transaction; or (2) a non-Member that was the ultimate clearing firm where a Member was the executing clearing firm⁶ for the transaction.

To illustrate how the ORF will be assessed and collected, the Exchange provides the following set of examples.

1. For all transactions executed on the Exchange, if the ultimate clearing firm is a Member of the Exchange, the ORF is assessed to and collected from that Member. If the ultimate clearing firm is not a Member of the Exchange, the ORF is collected from that non-Member clearing firm but assessed to the executing clearing firm.

2. If the transaction is executed on an away exchange, the ORF is only assessed and collected if either the executing clearing firm or ultimate clearing firm are Members of the Exchange. If the ultimate clearing firm is a Member of the Exchange, the ORF is assessed to and collected from that ultimate clearing firm. If the ultimate clearing firm is not a Member of the Exchange, the ORF is assessed to the executing clearing firm (again, only if that executing clearing firm is a Member of the Exchange), and collected from the ultimate clearing firm. Thus, to reiterate, if neither the executing clearing firm nor the ultimate clearing firm are members of the Exchange, no ORF is assessed or collected.

Finally, the Exchange will not assess the ORF on outbound linkage trades. "Linkage trades" are tagged in the Exchange's system, so the Exchange can distinguish them from other trades. A customer order routed to another exchange results in the appearance of two customer trades, one from the originating exchange and one from the recipient exchange. Charging ORF on both trades could result in double-

⁵ The Exchange takes into account any CMTA transfers when determining the ultimate clearing firm for a transaction. CMTA or Clearing Member Trade Assignment is a form of "give up" whereby the position will be assigned to a specific clearing firm at the OCC.

⁶ Throughout this filing, "executing clearing firm" means the clearing firm through which the entering broker indicated that the transaction would be cleared at the time it entered the original order which executed, and that clearing firm could be a designated "give up", if applicable. The executing clearing firm may be the ultimate clearing firm if no CMTA transfer occurs. If a CMTA transfer occurs, however, the ultimate clearing firm would be the clearing firm that the position was transferred to for clearing via CMTA.

³⁸ 17 CFR 200.30-3(a)(12), (59).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 1.5(p).

⁴ On August 8, 2022, the Commission approved SR-MEMX-2022-10, which proposed rules for the trading of options on the Exchange. See Securities Exchange Act Release No. 95445 (August 8, 2022), 87 FR 49894 (August 12, 2022) (SR-MEMX-2022-010). The Exchange plans to launch MEMX Options in September of 2023.