

K&L GATES

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# ETF HANDBOOK

Fourth Edition



## Introduction

Exchange-traded funds (ETFs) have become increasingly popular with investors, resulting in a growing number of traditional fund sponsors and entrepreneurs exploring entry into the ETF market. Entering and operating in the ETF market, however, requires an understanding of the unique regulatory requirements applicable to ETFs. In order to assist clients and other ETF industry participants to understand these requirements, K&L Gates and EdgarAgents have teamed up to bring you this ETF Handbook, Fourth Edition.

This Fourth Edition of the ETF Handbook (the Handbook) provides a summary of important regulatory considerations, rules, practices, and guidance, including:

- Rule 6c-11 (the ETF Rule) under the Investment Company Act of 1940, as amended (the 1940 Act);
- Form N-1A, the registration statement form used by most ETFs, highlighting the disclosure requirements unique to ETFs;
- The exemptive orders issued by the US Securities and Exchange Commission (SEC or Commission) to permit nontransparent actively managed ETFs (Non-Transparent Orders);
- The exemptive order and class relief letters issued by the SEC and SEC staff from the Securities and Exchange Act of 1934 to permit ETFs generally to trade in the secondary market in the same manner as traditional issuers;
- The generic listing standards adopted by existing national securities exchanges (and proposed by the Texas Stock Exchange) to permit ETFs that rely on the ETF Rule or a Non-Transparent Order to list their shares for trading;
- The form of exemptive application that, as of the publication date of this Handbook, the SEC is anticipated to require be filed in order for a fund to offer both an ETF share class and one or more mutual-fund share classes;
- A checklist for converting a mutual fund into an ETF and a summary of certain practical and regulatory considerations related to such conversions;
- Recent guidance primarily from the SEC Division of Corporation Finance applicable to cryptocurrency exchange-traded products (ETPs); and
- Certain guidance from the Financial Industry Regulatory Authority (FINRA) applicable to ETF marketing materials.

K&L Gates and EdgarAgents hope that you find this Handbook useful in connection with your development, launch, and operation of ETFs. We look forward to working with you on your ETF legal, filing, and printing needs.

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## **EdgarAgents: Your SEC Filing Agent from Launch, Conversion, and/or Share Class Creation to ongoing Regulatory Compliance & Shareholder Services**

The ever-increasing investor popularity of Exchange Traded Funds (ETFs) has led to a boon in the creation of new ETF complexes as well as traditional fund shops launching and applying for conversion and/or ETF share class expansion within existing complexes.

There is a unique SEC regulatory process to all of this expansion, even before reaching the plateau of cyclical, annual regulatory updates. From SEC application to new operational infrastructure, and from SEC relief grant to the rush for Board approvals, EdgarAgents is here to be your partner every step of the way.

- How do I launch an ETF? Add ETFs to my Mutual Fund complex? Get SEC approval to add ETF share classes to my existing line-up?
- What are the regulatory and legal requirements? Filing Requirements?
- How do I manage board education and approvals, notifications, and shareholder communications?
- Do I need proxies and board approvals for new ETF operations and trading infrastructure? What SEC filings does that require?

EdgarAgents is here to partner on all of this and more. We are a technology-driven, full-service SEC Filing Agent and Financial Printing Company. As an industry leader, we help our clients successfully achieve their regulatory requirements. EdgarAgents provides the experience and expertise of our tenured staff to quickly and accurately onboard, format, and submit all required SEC EDGAR filings, including Inline XBRL ("iXBRL") tagging.

And we don't stop there. Whether you are establishing a new ETF, or expanding your lineup, an Open-End, Closed-End, or Alternative Fund, EdgarAgents offers the insight, infrastructure, and technology you need to meet your regulatory compliance and shareholder reporting requirements.

Services we provide:

- Document Composition — Traditional Full-Service EDGAR/HTML
- Full Suite of Print & Distribution Capabilities
- Typesetting Conversion for Web- & Print-Ready Materials
- Work Your Way: Microsoft Word with track changes or traditional PDF mark-ups
- XBRL & iXBRL Tagging, XML Structured Data, & SEC Filing
- White-Glove, 24/7/365 Service
- Templates for Ease of Complex Data Preparation

## ETF DOCUMENTS AND FILINGS

Because ETFs fall under the guidelines of Form N-1A, document and regulatory workflows typically follow the path dictated by Legal, Compliance, and Fund Accounting departments.

Legal documents include Statutory & Summary Prospectuses, Statements of Additional Information, and Supplements. ETFs must meet the SEC's Interactive Data requirements — Inline XBRL ("iXBRL") tagging and filing the Risk/Return Summary Prospectuses, consistent with Mutual Fund iXBRL regulations. These consist of such filings as the 485BPOS, 497K, and event-driven 497.

Fund Accounting documents include periodic shareholder reports, such as annual (N-CSR) and semi-annual (N-CSRS) reports, and other portfolio reporting, such as N-PX (recently expanded), 40-17G, N-PORT, and N-CEN, as well as Form N-MFP2 for Money Market funds.

Additionally, the Marketing Team may provide branding input as to the style of compliance documents, Fact Sheets, Quarterly Commentary, and website design and layout.

### Meeting SEC Requirements — EDGAR Next Transition

**EDGAR Next is an initiative by the U.S. Securities and Exchange Commission ("SEC") to enhance the security and efficiency of the EDGAR system, which moves from individual registrant code-based access to single sign-on login.gov credentials with multi-factor authentication. This simplifies account access, management, and traceability.**

**Effective September 15, 2025, the SEC requires all filers to transition to EDGAR Next's Filer Management system. Prospective and existing EDGAR filers must use the new EDGAR Filer Management dashboard (<https://www.filermanagement.edgarfiling.sec.gov/>) to manage EDGAR access and Form ID applications.**

**Note:** The term "filers" and "registrants" are used interchangeably to describe an entity with a CIK and EDGAR access.

### Login.gov Integration

All individuals associated with EDGAR filings or needing access to EDGAR must obtain Login.gov credentials. These credentials are used to access the Filer Management site, the EDGAR Filing site (<https://www.onlineforms.edgarfiling.sec.gov/Welcome/EDGARLogin.htm>) and XML-Form Online Filing site (<https://www.onlineforms.edgarfiling.sec.gov/Welcome/EDGAROnlineFormsLogin.htm>) and are tied to the individual's email address. Multifactor authentication is required for added security.

## Form ID and EDGAR Access

Form ID is the application used by individuals and entities to register with the SEC and obtain access to EDGAR. Beginning March 24, 2025, all new Form ID applications must be submitted through the EDGAR Next dashboard and must comply with the amended format and supporting documentation, as needed.

After completing Form ID, listed Account Administrators receive email invitations to access the filer's EDGAR account via the Filer Management dashboard. Each must log in and accept their role within 14 days. If both fail to do so, the filer must submit a new Form ID. Once accepted, Account Administrators gain access to generate a new CCC, add users, assign additional administrators, and delegate filing authority to filing agents.

## EDGAR Next Codes and Role Based Access

EDGAR Next introduces new role-based access to a filer's EDGAR account through individual assignments per login.gov account and reduces the number of EDGAR codes required to manage the filer's account.

**CIK** (Central Index Key) — A unique public identifier, used in conjunction with CCC to submit EDGAR filings and required for EDGAR Next enrollment, which will remain in use, is a 10-character numeric code;

**CCC** (CIK Confirmation Code) — A confidential code, used in conjunction with the CIK to submit EDGAR filings and required for EDGAR Next enrollment, which will remain in use, is a case-sensitive 8-character code, which must include at least one number and at least one special character (@, #, \*, \$); the existing CCC used during EDGAR Next enrollment will be reset post-enrollment and will be viewable in the "Manage CCC & Password" section of the filer dashboard thereafter;

**Passphrase** — A passphrase used to permit an EDGAR filer to use the Filer Management website to manage all of its filing codes, including enrolling a filer in EDGAR Next; this can be reset on the new dashboard by a filer's EDGAR POC, which will retire by the end of 2025.

**Password** — A confidential code used to log on to the EDGAR system, which is a case-sensitive 12-character code, and which must include at least one number and at least one special character (@, #, \*, \$); no longer used for login to the EDGAR websites; will be replaced by Login.gov credentials by September 15, 2025.

**PMAC** (*Password Modification Authorization Code*) — A confidential code required to authorize a Password change, which will retire by the end of 2025.

**Account Administrators and Other Roles** — Registrants must designate a minimum of 2 Account Administrators to act on their behalf to manage access, authorize users, delegate to filers on behalf of the registrant CIKs, and perform the Annual Confirmation. Any individual assigned a role in EDGAR Next on behalf of a filer must have individual login.gov credentials.

**Annual Confirmation** — At least one Account Administrator of each filer must perform an annual access review to confirm that all information is accurate including user role access and delegated entities. Failure to perform this Annual Confirmation within a three-month grace period results in EDGAR deactivating the filer's account, blocking access and filing submission capabilities.

## **Enrollment Deadlines**

March 24, 2025 — EDGAR Next Filer Management site went live. New Form ID applications must thereafter comply with amended requirements.

September 15, 2025 — All filers must complete their transition to EDGAR Next; filers not enrolled in EDGAR Next cannot submit SEC filings until enrolled; login.gov credentials replace *password* to enter EDGAR sites.

December 19, 2025 — Final deadline for completing enrollment; EDGAR filers not enrolled cannot submit SEC filings and must re-apply for EDGAR access by submitting a new Form ID.

Note: The term "filers" and "registrants" are used interchangeably to describe an entity with a CIK and EDGAR access.

**40-APP:** Exemptive Application. An application for an Order under Section 6(c) of the Investment Company Act of 1940 (40 Act) granting an exemption from certain sections of the Act and Rules.

**N-8A:** Initial notification of registration under Section 8(a). This will generate the 40 Act file number (also known as the 811 number) for the filer. Each CIK can only have one 40 Act number.

**N-1A:** Initial Registration Statement for open-end management investment companies. For securities issued to the public, upon the filing of the N-1A, a Securities Act of 1933 (33 Act) filer number will be issued for the filer. Although a filer can have only one 40 Act number, a filer can have multiple 33 Act filer numbers.

Form N-1A consists of:

- Facing Sheet (Form cover page)
- Prospectus(es) (Part A)
- Statement(s) of Additional Information (Part B)
- Other Information and Attachments (Part C), including:
  - Exhibit List
  - Exhibits
  - Linked (previously filed) documents
  - Signature Page
  - Exhibit Index

(SEC's template for Form N-1As can be found at:  
<https://www.sec.gov/files/form-n-1a.pdf>)

The filing of the N-1A will include information about at least one new fund. Each fund will receive a Series Identifier, which is a unique 10-character code made up of an "S" with 9 numbers (e.g., S000098765). Additionally, the SEC requires that there be at least one Class/Contract Identifier per Series, which is a unique 10-character code made up of a "C" with 9 numbers (e.g., C000012345). Series and Class Identifiers are issued upon filing.

## Post-Effective Filings

After the Registration Statement is declared effective, ongoing update filings are required to be done annually, unless an event requiring SEC staff review dictates additional post-effective filings. For example:

**485APOS:** Post-effective amendment to Form N-1A pursuant to Rule 485(a). This form type is usually used when a new investment product or series is being generated or there are major changes relating to the existing product or ETF.

**485BPOS:** Statutory Prospectus and Statement of Additional Information. Post-effective amendment to Form N-1A pursuant to Rule 485(b), which is used for financial and minor updates. This form is typically filed annually.

**497K:** Summary Prospectus. Although not required, once an ETF adopts Summary Prospectus as the primary disclosure document, 497K must be filed and the Summary Prospectus posted to the website before any sales can commence.

**497:** Interim material changes to a Prospectus and/or SAI are filed as a Supplement. Any material changes affecting Items 2, 3, or 4 of Form N-1A, which would appear in the Fund Summary (Risk/Return) Section, must additionally be iXBRL tagged prior to filing.

**Risk/Return Inline XBRL (“iXBRL”):** Inline Extensible Business Reporting Language, or iXBRL tagging is needed for the annual Prospectus update and for any Supplements requiring changes to the Risk/Return Summary section, specifically items 2, 3 and 4 of the Statutory Prospectus, is now filed inline with the annual update and affected supplements, both shortening the previous 15-day window and thus corresponding workflows.

**485BXT:** Delaying Amendment filed to extend the prior registration statement for up to 30 days and designate a new effective date for the new registration statement.

## Periodic Financial and Holdings Reports

**N-CSR/N-CSRS & TSR:** Certified Shareholder Reports (Annual Report/Semi-Annual Report), must be filed within 10 days of commencement of the mailing of the Annual or Semi-Annual Report, typically 70 days after the close of the second and fourth quarters of each fiscal year and are filed with two Certification exhibits. Additionally, as of July 2024, Tailored Shareholder Reports (“TSRs”) must be filed as part of the Annual- and Semi-Annual Reports for each individual share class of every fund/product. Additionally, a Code of Ethics must be filed as an exhibit to the N-CSR annually.

**N-PORT:** Monthly filing for all registered funds (except Money Market Funds) to report series-level portfolio data and analytical risk and liquidity data. The SEC has recently extended the effective date for significant changes to Form N-PORT.

**N-CEN:** Used by all registered investment companies (other than face-amount certificate companies) to file annual reports containing census information and must be filed not later than 75 days after the close of each fiscal year. In November 2025, changes to reporting requirements regarding third-party liquidity service providers and entity identifiers on form N-CEN will take effect.

## Other Filings

Throughout the year, ETFs and/or their Advisors will have other filings such as:

Required: N-PX, 13F, 24F-2NT, 40-17G

Potential: N-14, DEF 14A, DEF 14C, 497AD, 40-17F1, 40-17F2, N-MFP2, N-30B-2, N-8F, 424A, 424B, POS AMI, CORRESP, etc.

## ABOUT COMMUNICATION TIMEFRAMES

### Prospectus(es) and Summary Prospectus(es)

Prospectuses or Summary Prospectuses must be provided annually to shareholders, either electronically or in printed form, no later than 160 days from the close of the fund's fiscal year end.

Pursuant to SEC Rule 498, a Summary Prospectus is a standalone document consisting of Items 2 through 8 of an ETF Statutory Prospectus, along with the fund's ticker symbol(s) and language describing how to find more information in the Statutory Prospectus or SAI.

An ETF may reduce its printing requirement by creating a Summary Prospectus and filing a 497K as its primary disclosure document.

### Supplements, aka "Stickers"

Throughout the year, a Registrant may make changes to Summary Prospectuses, Statutory Prospectuses, and SAIs. Those changes can be filed as 497 supplements without re-filing the entire document or registration statement.

They are sometimes referred to as "stickers" because the changes were historically printed as a sticker and pasted over the old text in printed documents.

Supplements must be provided to Shareholders, either electronically or in printed form. Registrants may re-file and print an amended Summary Prospectus for clarity and easier shareholder comprehension.

### Periodic Shareholder Reporting

Beginning in July 2024, Tailored Shareholder Reports ("TSRs") replaced the requirement for Annual- and Semi-Annual Reports to be provided to shareholders and must be provided in printed form unless opted-in to electronic delivery. Whereas Annual- and Semi-Annual Reports were large documents containing multiple funds and multiple share classes, TSRs must be broken out by individual share class of each individual fund and shareholders must receive the TSR of only those share classes of those funds held. Mailing of these reports must commence no later than 60 days after the close of the second and fourth quarters of each fiscal year. The EDGARized version must then be filed within 10 days of commencement of that mailing. There is no printing/mailing requirement for Quarterly reports, but ETFs can opt to provide them to shareholders. The Tailored Shareholder Report requirement effectively repealed the 30e3 notice and electronic availability option ("Notice and Access") for Mutual Funds and ETFs, but it is still possible for closed-end funds, variable products, and unit investment trusts.

## **Fact Sheets**

A Fact Sheet is typically used as part of an ETF's marketing materials, providing an overview of the ETF, and is created on a monthly or quarterly basis. Fact Sheets are not filed on EDGAR, but still fall under FINRA compliance guidelines. They are not required to be distributed to shareholders but must be submitted to and approved by FINRA before being made public.

## **Web Posting of ETF Literature**

The SEC requires web posting of Summary Prospectuses, Statutory Prospectuses, SAIs, and other documents, following specific inter-document linking and bookmarking requirements. The documents must be available on the public website and available for download and ordering by current or potential investors.

## **Updating Series Names, Class Names and Tickers on the SEC Portal**

The SEC requires registrants to keep certain information up to date on the EDGAR system. This includes Series and Class Names, Ticker symbols and the status of each Series and Class (Active, Inactive, Liquidated, Merged). EdgarAgents is here to assist you with these tasks.

*EdgarAgents is not a substitute for counsel and does not provide legal advice.*

# ETF Handbook

Fourth Edition

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## **GLOSSARY**

In this ETF Handbook, the following terms have the meanings set forth below.

*1940 Act* means the Investment Company Act of 1940, as amended.

*Advisers Act* means the Investment Advisers Act of 1940.

*CFTC* means the Commodity Futures Trading Commission.

*Code* means the Internal Revenue Code of 1986, as amended.

*ETF* means exchange-traded fund.

*ETF Rule* means Rule 6c-11 under the 1940 Act.

*ETP* means exchange-traded product. The authors consider exchange-traded notes ("ETNs"), which are debt securities, and ETFs that are registered under the 1940 Act to be types of ETPs, but recognize that there is no universally accepted definition of ETF or ETP. Accordingly, such terms may be used interchangeably.

*Exchange Act* means the Securities Exchange Act of 1934, as amended.

*FINRA* means the Financial Industry Regulatory Authority.

*SEC* or *Commission* means the U.S. Securities and Exchange Commission.

*Securities Act* means the Securities Act of 1933.

*Service* means the Internal Revenue Service.

On 26 September 2019, the SEC approved Rule 6c-11 under the 1940 Act and related amendments to Form N-1A (and Form N-8B-2, if applicable) for ETFs. Rule 6c-11, which is commonly referred to as the ETF Rule, allows for index-based and actively managed ETFs, so long as they comply with the ETF Rule's enumerated conditions, including providing full portfolio transparency.

The ETF Rule provides an exemption from Section 22(d) of the 1940 Act, which requires open-end fund shares to be purchased and sold only at net asset value, to allow ETF shares to be purchased and sold at secondary market prices. It also provides an exemption from the affiliated transaction provisions of the 1940 Act to permit persons who are affiliated with an ETF by virtue of owning 5% or more of an ETF's shares (and their affiliates) to purchase and redeem ETF shares in-kind (i.e., in exchange for a basket of securities). In addition, it provides an exemption from Section 22(e) of the 1940 Act, which generally requires open-end funds to honor redemption requests within seven days, to allow ETFs up to 15 days to deliver foreign investments in connection with in-kind redemptions of ETF shares.

Further, in the adopting release for the ETF Rule, the SEC interpreted the shares of ETFs to be "redeemable securities." This interpretation of ETF shares is important because certain Exchange Act restrictions include exceptions for redeemable securities or registered open-end investment companies, which are defined in the 1940 Act as companies that issue redeemable securities.

- Rule 10b-17(c) exempts issuers of redeemable securities from the requirement to provide notice of certain corporate actions (such as distributions) at least 10 days in advance of a record date. As a result of the Commission's interpretation of ETF shares as redeemable securities, they became exempt from this requirement.
- Rules 101(c)(4) and 102(d)(4) under Regulation M permit persons who may be deemed to be participating in a distribution of securities to bid for and purchase redeemable securities during the distribution. As a result of the Commission's interpretation of ETF shares as redeemable securities, such transactions in ETF shares became permissible both in the secondary market and in creation units.
- Rule 11d1-2 permits broker-dealers to extend credit (or margin) on shares of registered open-end investment companies and unit investment trusts (UITs) after they are held by the person to whom credit is being extended for 30 days. Interpreting ETF shares to be redeemable securities of the type issued by registered open-end companies and UITs clarified the ability of broker-dealers to extend credit on ETF shares after they are held by the person to whom credit is being extended for 30 days.

The compliance date of the ETF Rule was 23 December 2020. As of such date, the SEC automatically rescinded exemptive orders previously granted to ETFs that may rely on the rule. The rescission, however, did not impact exemptive orders for

ETFs that are structured as UITs, operate as a share class of a mutual fund, or do not provide full portfolio transparency because such ETFs may not rely on the rule. Accordingly, such ETFs may continue to rely on bespoke exemptive orders.

Although, as adopted, the ETF Rule did not allow leveraged and inverse leveraged (also called “geared”) ETFs to rely on it, the SEC later amended it to allow for leveraged and inverse leveraged ETFs, provided that they comply with Rule 18f-4 under the 1940 Act (the Derivatives Rule), including its Value at Risk (VaR)-based leverage risk limit. Thus, today, most leveraged and inverse leveraged ETFs operate in reliance on the ETF Rule. The only ones that do not were operational before 28 October 2020 and are excepted from compliance with the Derivatives Rule. Accordingly, they continue to rely on previously issued, bespoke exemptive orders.

The full text of the ETF Rule follows. The full text of the adopting release for the ETF Rule can be accessed at: <https://www.sec.gov/rules/final/2019/33-10695.pdf>.

## THE ETF RULE

### **§270.6c-11 Exchange-traded funds.**

#### (a) *Definitions.*

(1) For purposes of this section:

*Authorized participant* means a member or participant of a clearing agency registered with the Commission, which has a written agreement with the exchange-traded fund or one of its service providers that allows the authorized participant to place orders for the purchase and redemption of creation units.

*Basket* means the securities, assets or other positions in exchange for which an exchange-traded fund issues (or in return for which it redeems) creation units.

*Business day* means any day the exchange-traded fund is open for business, including any day when it satisfies redemption requests as required by section 22(e) of the Act (15 U.S.C. 80a-22(e)).

*Cash balancing amount* means an amount of cash to account for any difference between the value of the basket and the net asset value of a creation unit.

*Creation unit* means a specified number of exchange-traded fund shares that the exchange-traded fund will issue to (or redeem from) an authorized participant in exchange for the deposit (or delivery) of a basket and a cash balancing amount if any.

*Custom basket* means:

- (A) A basket that is composed of a non-representative selection of the exchange-traded fund’s portfolio holdings; or

- (B) A representative basket that is different from the initial basket used in transactions on the same business day.

*Exchange-traded fund* means a registered open-end management company:

- (A) That issues (and redeems) creation units to (and from) authorized participants in exchange for a basket and a cash balancing amount if any; and
- (B) Whose shares are listed on a national securities exchange and traded at market-determined prices.

*Exchange-traded fund share* means a share of stock issued by an exchange-traded fund.

*Foreign investment* means any security, asset or other position of the ETF issued by a foreign issuer as that term is defined in §240.3b-4 of this title, and that is traded on a trading market outside of the United States.

*Market price* means:

- (A) The official closing price of an exchange-traded fund share; or
- (B) If it more accurately reflects the market value of an exchange-traded fund share at the time as of which the exchange-traded fund calculates current net asset value per share, the price that is the midpoint between the national best bid and national best offer as of that time.

*National securities exchange* means an exchange that is registered with the Commission under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f).

*Portfolio holdings* means the securities, assets or other positions held by the exchange-traded fund.

*Premium or discount* means the positive or negative difference between the market price of an exchange-traded fund share at the time as of which the current net asset value is calculated and the exchange-traded fund's current net asset value per share, expressed as a percentage of the exchange-traded fund share's current net asset value per share.

- (2) Notwithstanding the definition of exchange-traded fund in paragraph (a)(1) of this section, an exchange-traded fund is not prohibited from selling (or redeeming) individual shares on the day of consummation of a reorganization, merger, conversion or liquidation, and is not limited to transactions with authorized participants under these circumstances.

- (b) *Application of the Act to exchange-traded funds.* If the conditions of paragraph (c) of this section are satisfied:
- (1) *Redeemable security.* An exchange-traded fund share is considered a “redeemable security” within the meaning of section 2(a)(32) of the Act (15 U.S.C. 80a-2(a)(32)).
  - (2) *Pricing.* A dealer in exchange-traded fund shares is exempt from section 22(d) of the Act (15 U.S.C. 80a-22(d)) and §270.22c-1(a) with regard to purchases, sales and repurchases of exchange-traded fund shares at market-determined prices.
  - (3) *Affiliated transactions.* A person who is an affiliated person of an exchange-traded fund (or who is an affiliated person of such a person) solely by reason of the circumstances described in paragraphs (b)(3)(i) and (ii) of this section is exempt from sections 17(a)(1) and 17(a)(2) of the Act (15 U.S.C. 80a-17(a)(1) and (a)(2)) with regard to the deposit and receipt of baskets:
    - (i) Holding with the power to vote 5% or more of the exchange-traded fund’s shares; or
    - (ii) Holding with the power to vote 5% or more of any investment company that is an affiliated person of the exchange-traded fund.
  - (4) *Postponement of redemptions.* If an exchange-traded fund includes a foreign investment in its basket, and if a local market holiday, or series of consecutive holidays, or the extended delivery cycles for transferring foreign investments to redeeming authorized participants prevents timely delivery of the foreign investment in response to a redemption request, the exchange-traded fund is exempt, with respect to the delivery of the foreign investment, from the prohibition in section 22(e) of the Act (15 U.S.C. 80a-22(e)) against postponing the date of satisfaction upon redemption for more than seven days after the tender of a redeemable security if the exchange-traded fund delivers the foreign investment as soon as practicable, but in no event later than 15 days after the tender of the exchange-traded fund shares.
- (c) *Conditions.*
- (1) Each business day, an exchange-traded fund must disclose prominently on its website, which is publicly available and free of charge:
    - (i) Before the opening of regular trading on the primary listing exchange of the exchange-traded fund shares, the following information (as applicable) for each portfolio holding that will form the basis of the next calculation of current net asset value per share:
      - (A) Ticker symbol;
      - (B) CUSIP or other identifier;

- (C) Description of holding;
  - (D) Quantity of each security or other asset held; and
  - (E) Percentage weight of the holding in the portfolio;
- (ii) The exchange-traded fund's current net asset value per share, market price, and premium or discount, each as of the end of the prior business day;
  - (iii) A table showing the number of days the exchange-traded fund's shares traded at a premium or discount during the most recently completed calendar year and the most recently completed calendar quarters since that year (or the life of the exchange-traded fund, if shorter);
  - (iv) A line graph showing exchange-traded fund share premiums or discounts for the most recently completed calendar year and the most recently completed calendar quarters since that year (or the life of the exchange-traded fund, if shorter);
  - (v) The exchange-traded fund's median bid-ask spread, expressed as a percentage rounded to the nearest hundredth, computed by:
    - (A) Identifying the exchange-traded fund's national best bid and national best offer as of the end of each 10 second interval during each trading day of the last 30 calendar days;
    - (B) Dividing the difference between each such bid and offer by the midpoint of the national best bid and national best offer; and
    - (C) Identifying the median of those values; and
  - (vi) If the exchange-traded fund's premium or discount is greater than 2% for more than seven consecutive trading days, a statement that the exchange-traded fund's premium or discount, as applicable, was greater than 2% and a discussion of the factors that are reasonably believed to have materially contributed to the premium or discount, which must be maintained on the website for at least one year thereafter.
- (2) The portfolio holdings that form the basis for the exchange-traded fund's next calculation of current net asset value per share must be the ETF's portfolio holdings as of the close of business on the prior business day.

- (3) An exchange-traded fund must adopt and implement written policies and procedures that govern the construction of baskets and the process that will be used for the acceptance of baskets; *provided, however*, if the exchange-traded fund utilizes a custom basket, these written policies and procedures also must:
  - (i) Set forth detailed parameters for the construction and acceptance of custom baskets that are in the best interests of the exchange-traded fund and its shareholders, including the process for any revisions to, or deviations from, those parameters; and
  - (ii) Specify the titles or roles of the employees of the exchange-traded fund's investment adviser who are required to review each custom basket for compliance with those parameters.
- (4) An exchange-traded fund that seeks, directly or indirectly, to provide investment returns that correspond to the performance of a market index by a specified multiple, or to provide investment returns that have an inverse relationship to the performance of a market index, over a predetermined period of time, must comply with all applicable provisions of §270.18f-4.
- (d) *Recordkeeping*. The exchange-traded fund must maintain and preserve for a period of not less than five years, the first two years in an easily accessible place:
  - (1) All written agreements (or copies thereof) between an authorized participant and the exchange-traded fund or one of its service providers that allows the authorized participant to place orders for the purchase or redemption of creation units;
  - (2) For each basket exchanged with an authorized participant, records setting forth:
    - (i) The ticker symbol, CUSIP or other identifier, description of holding, quantity of each holding, and percentage weight of each holding composing the basket exchanged for creation units;
    - (ii) If applicable, identification of the basket as a custom basket and a record stating that the custom basket complies with policies and procedures that the exchange-traded fund adopted pursuant to paragraph (c)(3) of this section;
    - (iii) Cash balancing amount (if any); and
    - (iv) Identity of authorized participant transacting with the exchange-traded fund.

In connection with the adoption of the ETF Rule, the SEC adopted disclosure amendments to Form N-1A (the Disclosure Amendments), the registration form used by open-end funds, designed to provide ETF investors with additional information regarding ETF trading and associated costs. The Disclosure Amendments:

- Add narrative disclosure to clarify that the fees and expenses reflected in the expense table may be higher for investors if they buy, hold, and sell shares of an ETF (Item 3);
- Include narrative disclosures relating to ETF trading costs, including bid-ask spreads (Item 6);
- Require all ETFs to disclose median bid-ask spread information on their websites or in their prospectus (Item 6);
- Exclude ETFs that provide premium/discount disclosures on their websites in accordance with Rule 6c-11 from the premium and discount disclosure requirements in Form N-1A (Items 11 and 27); and
- Eliminate disclosure related to creation unit size.

Extracts of Form N-1A effective 11 December 2023, reflecting the Disclosure Amendments and the provisions of Form N-1A that are applicable and unique to ETFs, are reproduced for your reference here. The full text of the most current version of Form N-1A can be accessed at: <https://www.sec.gov/files/form-n-1a.pdf>.

This is a reference copy of Form N-1A. You may not send a completed printout of this form to the SEC to satisfy a filing obligation. You can only satisfy an SEC filing obligation by submitting the information required by this form to the SEC in electronic format online at <https://www.edgarfiling.sec.gov>.

NOTE: This version of Form N-1A is effective December 11, 2023 and includes amendments pursuant to Money Market Fund Reforms; Form PF Reporting Requirements for Large Liquidity Fund Advisers; Technical Amendments to Form N-CSR and Form N-1A (Release No. IC-34959) and Investment Company Names (Release No. IC-35000). More information about effective and compliance dates and the amendments the Commission adopted may be found in these releases.

## OMB APPROVAL

OMB Number: 3235-0307

Expires: July 31, 2027

Estimated average burden  
hours per response 297.7

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 20549

**FORM N-1A****Check appropriate box or boxes**

- ☐ REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933
- ☐ Pre-Effective Amendment No.
- ☐ Post-Effective Amendment No.
- and/or**
- ☐ REGISTRATION STATEMENT UNDER THE INVESTMENT COMPANY ACT OF 1940
- ☐ Amendment No.

\_\_\_\_\_  
Registrant Exact Name as Specified in Charter\_\_\_\_\_  
Address of Principal Executive Offices (Number, Street, City, State, Zip Code)\_\_\_\_\_  
Registrant's Telephone Number, including Area Code\_\_\_\_\_  
Name and Address (Number, Street, City, State, Zip Code) of Agent for Service\_\_\_\_\_  
Approximate Date of Proposed Public Offering**It is proposed that this filing will become effective (check appropriate box):**

- ☐ immediately upon filing pursuant to paragraph (b)
- ☐ on (date) pursuant to paragraph (b)
- ☐ 60 days after filing pursuant to paragraph (a)
- ☐ on (date) pursuant to paragraph (a)
- ☐ 75 days after filing pursuant to paragraph (a)(2)
- ☐ on (date) pursuant to paragraph (a)(2) of rule 485

**If appropriate, check the following box:**

- ☐ This post-effective amendment designates a new effective date for a previously filed post-effective amendment.

Omit from the facing sheet reference to the other Act if the Registration Statement or amendment is filed under only one of the Acts. Include the "Approximate Date of Proposed Public Offering" and "Title of Securities Being Registered" only where securities are being registered under the Securities Act of 1933.

**Persons who respond to the collection of information  
contained in this form are not required to respond unless  
the form displays a currently valid OMB control number.**

**CONTENTS OF FORM N-1A****GENERAL INSTRUCTIONS**

- A. Definitions
- B. Filing and Use of Form N-1A
  - 1. What is Form N-1A used for?
  - 2. What is included in the registration statement?
  - 3. What are the fees for Form N-1A?
  - 4. What rules apply to the filing of a registration statement on Form N-1A?
- C. Preparation of the Registration Statement
  - 1. Administration of the Form N-1A requirements
  - 2. Form N-1A is divided into three parts
  - 3. Additional Matters
- D. Incorporation by Reference
  - 1. Specific rules for incorporation by reference in Form N-1A
  - 2. General Requirements

**Part A — INFORMATION REQUIRED IN A PROSPECTUS**

- Item 1. Front and Back Cover Pages
- Item 2. Risk/Return Summary: Investment Objectives/Goals
- Item 3. Risk/Return Summary: Fee Table
- Item 4. Risk/Return Summary: Investments, Risks, and Performance
- Item 5. Management
- Item 6. Purchase and Sale of Fund Shares
- Item 7. Tax Information
- Item 8. Financial Intermediary Compensation
- Item 9. Investment Objectives, Principal Investment Strategies, Related Risks, and Disclosure of Portfolio Holdings
- Item 10. Management, Organization, and Capital Structure
- Item 11. Shareholder Information
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- Item 13. Financial Highlights Information

**Part B — INFORMATION REQUIRED IN A STATEMENT OF ADDITIONAL INFORMATION**

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- Item 20. Portfolio Managers
- Item 21. Brokerage Allocation and Other Practices
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**Part C — OTHER INFORMATION**

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- Item 30. Indemnification
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**SIGNATURES**

**GENERAL INSTRUCTIONS****A. Definitions**

**[...]**

“Exchange-Traded Fund” means a Fund or Class, the shares of which are listed and traded on a national securities exchange, and that has formed and operates under an exemptive order granted by the Commission or in reliance on rule 6c-11 [17 CFR 270.6c-11] under the Investment Company Act.

**[...]**

“Market Price” has the same meaning as in rule 6c-11 [17 CFR 270.6c-11] under the Investment Company Act.

**[...]**

**Part A — INFORMATION REQUIRED IN A PROSPECTUS****Item 1. Front and Back Cover Pages**

- (a) Front Cover Page. Include the following information, in plain English under rule 421(d) under the Securities Act, on the outside front cover page of the prospectus:

[...]

- (2) The exchange ticker symbol of the Fund's shares or, if the prospectus relates to one or more Classes of the Fund's shares, adjacent to each such Class, the exchange ticker symbol of such Class of the Fund's shares. If the Fund is an Exchange-Traded Fund, also identify the principal U.S. market or markets on which the Fund shares are traded.

[...]

**Item 3. Risk/Return Summary: Fee Table**

Include the following information, in plain English under rule 421(d) under the Securities Act, after Item 2:

*Fees and Expenses of the Fund*

This table describes the fees and expenses that you may pay if you buy, hold, and sell shares of the Fund. **You may pay other fees, such as brokerage commissions and other fees to financial intermediaries, which are not reflected in the tables and examples below.** You may qualify for sales charge discounts if you and your family invest, or agree to invest in the future, at least \$[ ] in [name of fund family] funds. More information about these and other discounts is available from your financial intermediary and in [identify section heading and page number] of the Fund's prospectus and [identify section heading and page number] of the Fund's statement of additional information.

[...]

**Instructions****1. General**

[...]

- (e) If the Fund is an Exchange-Traded Fund, exclude any fees charged for the purchase and redemption of the Fund's creation units.

[...]

**Item 6. Purchase and Sale of Fund Shares**

[...]

- (c) *Exchange-Traded Funds*. If the Fund is an Exchange-Traded Fund, the Fund may omit the information required by paragraphs (a) and (b) of this Item and must disclose:
- (1) That Individual Fund shares may only be bought and sold in the secondary market through a broker or dealer at a market price;
  - (2) That because ETF shares trade at market prices rather than net asset value, shares may trade at a price greater than net asset value (premium) or less than net asset value (discount);
  - (3) That an investor may incur costs attributable to the difference between the highest price a buyer is willing to pay to purchase shares of the Fund (bid) and the lowest price a seller is willing to accept for shares of the Fund (ask) when buying or selling shares in the secondary market (the “bid-ask spread”);
  - (4) If applicable, how to access recent information, including information on the Fund’s net asset value, Market Price, premiums and discounts, and bid-ask spreads, on the Exchange-Traded Fund’s website; and
  - (5) The median bid-ask spread for the Fund’s most recent fiscal year.

### Instructions

1. A Fund may omit the information required by paragraph (c)(5) of this Item if it satisfies the requirements of paragraph (c)(1)(v) of Rule 6c-11 [17 CFR 270.6c-11(c)(1)(v)] under the Investment Company Act.
2. An Exchange-Traded Fund that had its initial listing on a national securities exchange at or before the beginning of the most recently completed fiscal year must include the median bid-ask spread for the Fund’s most recent fiscal year. For an Exchange-Traded Fund that had an initial listing after the beginning of the most recently completed fiscal year, explain that the Exchange-Traded Fund did not have a sufficient trading history to report trading information and related costs. Information should be based on the most recently completed fiscal year end.
3. Bid-Ask Spread (Median). Calculate the median bid-ask spread by dividing the difference between the national best bid and national best offer by the mid-point of the national best bid and national best offer as of the end of each ten-second interval throughout each trading day of the Exchange-Traded Fund’s most recent fiscal year. Once the bid-ask spread for each ten-second interval throughout the fiscal year is determined, sort the spreads from lowest to highest. If there is an odd number of spread intervals, then the median is the middle number. If there is an even number of spread intervals, then the median is the average between the two middle numbers. Express the spread as a percentage, rounded to the nearest hundredth percent.

4. A Fund may combine the information required by Item 6(c)(4) into the information required by Item 1(b)(1) and Rule 498(b)(1)(v) [17 CFR 230.498(b)(1)(v)] under the Securities Act.

[...]

### Item 11. Shareholder Information

- (a) *Pricing of Fund Shares.* Describe the procedures for pricing the Fund's shares, including:

- (1) An explanation that the price of Fund shares is based on the Fund's net asset value and the method used to value Fund shares (market price, fair value, or amortized cost); except that if the Fund is an Exchange-Traded Fund, an explanation that the price of Fund shares is based on a market price.

[...]

- (g) *Exchange-Traded Funds.* If the Fund is an Exchange-Traded Fund:

- (1) The Fund may omit from the prospectus the information required by Items 11(a)(2), (b), and (c).
- (2) Provide a table showing the number of days the Market Price of the Fund shares was greater than the Fund's net asset value and the number of days it was less than the Fund's net asset value (*i.e.*, premium or discount) for the most recently completed calendar year, and the most recently completed calendar quarters since that year (or the life of the Fund, if shorter). The Fund may omit the information required by this paragraph if it satisfies the requirements of paragraphs (c)(1)(ii) – (iv) and (c)(1)(vi) of Rule 6c-11 [17 CFR 270.6c-11(c)(1)(ii) – (iv) and (c)(1)(vi)] under the Investment Company Act.

### Instruction

1. Provide the information in tabular form.
2. Express the information as a percentage of the net asset value of the Fund, using separate columns for the number of days the Market Price was greater than the Fund's net asset value and the number of days it was less than the Fund's net asset value. Round all percentages to the nearest hundredth of one percent.

3. Adjacent to the table, provide a brief explanation that: shareholders may pay more than net asset value when they buy Fund shares and receive less than net asset value when they sell those shares, because shares are bought and sold at current market prices.
4. Include a statement that the data presented represents past performance and cannot be used to predict future results.

[...]

**Part B — INFORMATION REQUIRED IN A STATEMENT OF  
ADDITIONAL INFORMATION**

**Item 14. Cover Page and Table of Contents**

- (a) *Front Cover Page.* Include the following information on the outside front cover page of the SAI:

[...]

- (2) The exchange ticker symbol of the Fund's securities or, if the SAI relates to one or more Classes of the Fund's securities, adjacent to each such class, the exchange ticker symbol of such Class of the Fund's securities. If the Fund is an Exchange-Traded Fund, also identify the principal U.S. market or markets on which the Fund shares are traded.

[...]

**Item 27A. Annual and Semi-Annual Shareholder Report**

[...]

- (b) *Cover Page or Beginning of Annual or Semi-Annual Shareholder Report.* Include on the cover page or at the beginning of the annual or semi-annual shareholder report:

[...]

- (2) The exchange ticker symbol of the Fund's shares or, if the annual or semi-annual shareholder report relates to a Class of the Fund's shares, its exchange ticker symbol. If the Fund is an Exchange-Traded Fund, also identify the principal U.S. market or markets on which the Fund's shares are traded.

[...]

- (d) *Management's Discussion of Fund Performance.* Disclose the following information unless the Fund is a Money Market Fund. A Money Market Fund is permitted but not required to disclose some or all of the following information, so long as the information the Money Market Fund chooses to disclose meets the requirements of the relevant paragraph, including any related instructions, and is not incomplete, inaccurate, or misleading.

[...]

- (4) For an Exchange-Traded Fund, provide a table showing the number of days the Market Price of the Fund shares was greater than the Fund's net asset value and the number of days it was less than the Fund's net asset value (i.e., premium or discount) for the most recently completed calendar year, and the most recently completed calendar

quarters since that year (or the life of the Fund, if shorter). The Fund may omit the information required by this paragraph if it satisfies the requirements of paragraphs (c)(1)(ii) – (iv) and (c)(1)(vi) of Rule 6c-11 [17 CFR 270.6c-11(c)(1)(ii) – (iv) and (c)(1)(vi)] under the Investment Company Act.

### Instructions

1. Provide the information in tabular form.
2. Express the information as a percentage of the net asset value of the Exchange-Traded Fund, using separate columns for the number of days the Market Price was greater than the Fund's net asset value and the number of days it was less than the Fund's net asset value. Round all percentages to the nearest hundredth of one percent.
3. Adjacent to the table, provide a brief explanation that: shareholders may pay more than net asset value when they buy Fund shares and receive less than net asset value when they sell those shares, because shares are bought and sold at current market prices.
4. Include a statement that the data presented represents past performance and cannot be used to predict future results.

The following section provides a summary of the various nontransparent actively managed ETF structures (NTA ETFs) currently permitted by SEC exemptive orders issued under the 1940 Act. Unlike fully transparent ETFs that rely on the ETF Rule, NTA ETFs do not disclose their portfolio holdings on a daily basis. Instead, they are permitted to disclose their portfolio holdings on the same schedule as mutual funds, which could be as infrequently as quarterly with a 60-day lag.

NTA ETFs utilize different methodologies to obscure their portfolio holdings, yet are designed to provide sufficient additional information to market participants to support the ETF arbitrage mechanism. The effectiveness of the arbitrage mechanism determines the closeness of the relationship between the market price of an NTA ETF's shares and its net asset value per share (NAV). Thus, NTA ETF sponsors seek to provide sufficiently robust additional information that market participants create new shares when market prices are at a premium to NAV and conversely, redeem shares when market prices are at a discount to NAV, thereby minimizing differences between market price and NAV.

Many of the NTA ETF structures described below may be licensed or otherwise used by third parties pursuant to negotiations with the original applicant and a 1940 Act exemptive order "short form" exemptive application. In a short-form exemptive application, a would-be NTA ETF sponsor will represent that it will comply with the terms and conditions of the original relief, as summarized below but subject to future amendment.

To date, each NTA ETF structure described below relying on a proxy portfolio (Proxy Portfolio) methodology has been amended to permit customization of baskets so that a creation or redemption basket may be comprised of securities that are not representative of pro rata slice of the NTA ETF's Proxy Portfolio. Further amendments to NTA ETF base exemptive relief by certain applicants can be expected to broaden the asset classes currently permitted to NTA ETFs such that NTA ETFs would no longer be restricted to instruments that trade contemporaneously with the NTA ETF's shares, as well as the utilization of custom baskets.

The first summary pertains to the nontransparent active structure developed by Precidian Funds LLC, which uniquely relies on the dissemination of a verified intraday indicative value to support the arbitrage mechanism. The remainder of the summaries pertain to structures developed by the following ETF sponsors and market participants, which use what is variously referred to as a Proxy Portfolio, substitute portfolio, or tracking basket (Tracking Basket) to support the arbitrage mechanism:

- T. Rowe Price, Inc.;
- NYSE Group, Inc. and Natixis Advisers, L.P.;
- Fidelity Management & Research Company;
- Blue Tractor Group, LLC; and
- Invesco Capital Management, LLC.

### A. Precidian Funds LLC

The arbitrage mechanism contemplates each fund (Fund) providing a verified intraday indicative value (VIIV), calculated and disseminated every second throughout the trading day by each Fund's listing exchange during regular trading hours, through the facilities of the Consolidated Tape Association. The specific methodology for calculating the VIIV will be disclosed on the Fund's website. The VIIV will be calculated to the nearest penny by dividing the intraday fund value (Intraday Fund Value) as of the time of the calculation by the number of total shares (Shares) outstanding. The Intraday Fund Value is the sum of the Fund's assets (e.g., the amount of cash and cash equivalents held in a Fund's portfolio, the current value of the securities positions in the Fund's portfolio, plus any accrued interest, and declared but unpaid dividends) minus all accrued liabilities. The portfolio used for calculating the VIIV will be the same portfolio used to calculate the Fund's NAV for that business day (Business Day).

Each Fund will employ two separate calculation engines (Calculation Engines), a primary and a secondary, to provide two independently calculated sources of intraday indicative values (IIVs) throughout each trading day, which must match and be verified (as discussed below) to become the published VIIV. All portfolio securities will be valued by the Calculation Engines throughout the trading day at the midpoint between the current national best bid and national best offer.

Each Fund will employ a pricing verification agent (Pricing Verification Agent) to compare, and establish a computer-based protocol that will permit the Pricing Verification Agent to continuously compare, the two IIVs from the Calculation Engines on a real time basis. While the expectation is that the separately calculated IIVs will generally match, having dual streams of redundant data that must be compared by the Pricing Verification Agent will provide an additional check that the published VIIV is accurate.

The VIIV, when combined with the ability to create and redeem shares using a Creation Basket (see below) that is a pro rata slice of the Fund's portfolio holdings should, as with existing ETFs, ensure that the Shares will trade at a market price at or close to the NAV per Share of the Fund.

Each Fund will disclose a pro rata slice of its portfolio to AP representatives (AP Representatives) each trading day (Creation Basket). Each AP Representative will be a registered broker-dealer that acts as an agent of the authorized participant(s) (Authorized Participant(s)) with whom it has contracted to play such a role. In selecting entities to serve as AP Representatives, a Fund will obtain, both initially and each year thereafter, representations from the entity related to the confidentiality of the Fund's Creation Basket, the effectiveness of information barriers, and the adequacy of insider trading policies and procedures. In addition, as a broker, Section 15(g) of the Exchange Act requires the AP Representative to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information by the AP Representative, or any person associated with the AP Representative.

Authorized Participants will establish and maintain a confidential account (Confidential Account) with an AP Representative, through which the AP Representative will trade Creation Basket securities upon instructions from the Authorized Participant for the benefit of the Authorized Participant. Pursuant to a contract between them (Confidential Account Agreement), the AP Representative will be restricted from disclosing the Creation Basket to the Authorized Participant. In addition, the AP Representative will undertake an obligation not to use its knowledge about the Creation Basket for any purpose other than executing creations and redemptions for its Authorized Participant(s). However, the Confidential Account will enable Authorized Participants to transact in the securities in Creation Baskets through their AP Representatives, without knowing the identity or weighting of those securities.

#### **B. T. Rowe Price, Inc.**

The Proxy Portfolio is a basket of cash and securities that has at least an 80% overlap with the Fund's portfolio holdings (by weight) and is designed to closely track the daily performance of the Fund. The Proxy Portfolio could be a broad-based securities index (such as that identified in the Fund's prospectus for comparison purposes) or the Fund's last disclosed portfolio holdings. The Proxy Portfolio will be composed pursuant to Proxy Portfolio policies and procedures that are part of the Fund's Rule 38a-1 compliance program. In addition to the Proxy Portfolio, the Fund will publish daily on its website the following information:

- The percentage overlap between the Fund's portfolio and the Proxy Portfolio as of the close of business on the prior trading day (Portfolio Overlap);
- The difference between the one-day performance of the Fund (at NAV) and the performance of the Proxy Portfolio for the last 250 trading days (Daily Deviation);
- The largest Daily Deviation in basis points during the past year 99%, 95%, 90%, 75%, 50%, 25%, 10%, 5%, and 1% of trading days (Empirical Percentiles); and
- The standard deviation during the past three months of Daily Deviations (as a percentage difference) (Tracking Error).

#### **C. NYSE Group, Inc. and Natixis Advisers, L.P.**

The Proxy Portfolio is a basket of cash and securities that is designed to closely track the daily performance of the Fund's then-current portfolio (Actual Portfolio).

This is achieved by performing a "Factor Model" analysis of a Fund's Actual Portfolio. The Factor Model is comprised of three sets of factors or analytical metrics: market-based factors, fundamental factors, and industry/sector factors. Each Fund will have a universe of securities (Model Universe) that will be used to generate the Fund's Proxy Portfolio. The Model Universe will be comprised of securities that the

Fund can purchase and will be a financial index or stated portfolio of securities from which Fund investments will be selected. The results of the Factor Model analysis of a Fund's Actual Portfolio are then applied to the Fund's Model Universe. The daily rebalanced Proxy Portfolio is then generated as a result of this Model Universe analysis with the Proxy Portfolio being a small subset of the Model Universe. The Factor Model is applied to both the Actual Portfolio and the Model Universe to construct a Fund's Proxy Portfolio, which performs in a manner substantially identical to the performance of its Actual Portfolio.

The Proxy Portfolio will be composed pursuant to Proxy Portfolio policies and procedures that are part of the Fund's Rule 38a-1 compliance program. In addition to the Proxy Portfolio, the Fund will publish daily on its website the following information:

- The percentage weight overlap between the holdings of the prior Business Day's Proxy Portfolio compared to the Actual Portfolio's holdings that formed the basis for the Fund's calculation of NAV at the end of the prior Business Day (Portfolio Overlap); and
- The standard deviation over the past three months of daily proxy spread (i.e., the difference, in percentage terms, between the Proxy Portfolio per share NAV and that of the Actual Portfolio at the end of the trading day) (Tracking Error).

#### **D. Fidelity Management & Research Company**

The Tracking Basket is a basket of securities and cash that is designed to closely track the daily performance of the Fund. The Tracking Basket is comprised of (1) select recently disclosed portfolio holdings (Strategy Components), (2) liquid US ETFs that convey information about the types of instruments (that are not otherwise fully represented by the Strategy Components) in which the Fund invests (Representative ETFs), and (3) cash and cash equivalents. Representative ETFs will be limited to 50% of the Tracking Basket each day.

The Tracking Basket will be constructed utilizing a mathematical optimization process to minimize deviations in the daily returns of the Tracking Basket relative to the daily returns of the Fund. The proprietary optimization process mathematically seeks to minimize three key parameters that applicants believe are important to the effectiveness of the Tracking Basket as a hedge: (1) Tracking Error (i.e., the standard deviation over the past three months of the daily proxy spread (i.e., the difference, in percentage terms, between the Tracking Basket per share NAV and that of the Fund at the end of the trading day)), (2) turnover cost, and (3) basket creation cost.

The Tracking Basket is expected to be rebalanced on schedule with the public disclosure of the Fund's holdings, but a new Tracking Basket may be generated as frequently as daily. In determining whether to rebalance the Tracking Basket, the adviser will consider various factors, including liquidity of the securities in the Tracking Basket, Tracking Error, and the cost to create and trade the Tracking Basket. For example, if the adviser determines that a new Tracking Basket may reduce the

variability of return differentials between the Tracking Basket and the Fund when balanced against the cost to trade the new Tracking Basket, rebalancing may be appropriate.

The Tracking Basket will be composed pursuant to Tracking Basket policies and procedures that are part of the Fund's Rule 38a-1 compliance program.

In addition to the Tracking Basket, the Fund will publish daily on its website the percentage weight overlap between the holdings of the prior Business Day's Tracking Basket compared to the holdings of the Fund that formed the basis for the Fund's calculation of NAV at the end of the prior Business Day (Tracking Basket Weight Overlap).

### **E. Blue Tractor Group, LLC**

Each day, a proprietary algorithmic process is applied to the Fund portfolio to generate a basket of securities and cash, the performance of which is designed to closely track the performance of the Fund's portfolio.

The adviser will apply a proprietary algorithmic process (the Shielded Alpha<sup>SM</sup> Solution) to the Fund's portfolio instruments on a daily basis to generate the Dynamic SSR<sup>SM</sup> Portfolio. The Dynamic SSR<sup>SM</sup> Portfolio construction process has four key elements:

- It will contain all of the names of the securities in the Actual Portfolio, and only the securities that are in the Actual Portfolio (and also could contain cash to represent the Fund's holdings of cash);
- It will have a minimum weightings overlap of 90% with the Fund's portfolio assets at the beginning of each trading day, with the precise percentage of aggregate overlap in weightings from 90% to 100% randomly generated each day and not disclosed;
- The potential deviation in the weightings of specific securities and cash positions in the Dynamic SSR<sup>SM</sup> Portfolio from the weightings of those specific securities and cash positions in the Actual Portfolio as of the beginning of each trading day will be subject to a publicly disclosed maximum deviation (e.g., 2%) (Guardrail Amount), which will ensure that no individual security in the Dynamic SSR<sup>SM</sup> Portfolio will be overweighted or underweighted by more than the publicly disclosed percentage when compared to the actual weighting of each security within the Fund portfolio as of the beginning of each trading day; and
- After randomly determining the specific overlap amount for a given day, the algorithm will generate the weightings of the specific securities in the Dynamic SSR<sup>SM</sup> Portfolio within the specified Guardrail Amount and with the goal of maximizing the correlation between the Dynamic SSR<sup>SM</sup> Portfolio and the Actual Portfolio. The Tracking Error (the standard

deviation over the past three months of the daily difference, in percentage terms, between the Dynamic SSR<sup>SM</sup> Portfolio per share NAV and that of the Fund at the end of the trading day) is not expected to exceed 1%.

The Dynamic SSR<sup>SM</sup> Portfolio will be composed pursuant to Dynamic SSR<sup>SM</sup> Portfolio policies and procedures that are part of the Fund's Rule 38a-1 compliance program. In addition to the Dynamic SSR<sup>SM</sup> Portfolio, the Fund will publish daily on its website the Guardrail Amount.

#### **F. Invesco Capital Management, LLC**

The Substitute Basket is a basket of cash and securities that has between 70%–95% overlap with the Fund's portfolio holdings (by weight) and is designed to closely track the daily performance of the Fund. The Substitute Basket will be composed pursuant to Substitute Basket policies and procedures that are part of the Fund's Rule 38a-1 compliance program.

The Substitute Basket will often include a significant percentage of the securities held in the Fund's portfolio, but it will exclude certain securities held in the Fund's portfolio (or modify their weightings), such as those the Fund's portfolio managers are actively looking to purchase or sell, or securities, which if disclosed, could increase the risk of front-running or free-riding (Protected Securities).

To further reduce market participants' risk and to provide intraday price certainty, each Fund may strike and publish its NAV more than once during each Business Day at intervals determined by the adviser. For example, a Fund may strike a NAV once during normal trading at 12:00 PM ET (Intraday NAV) and again at the close of trading at 4:00 PM ET (End of Day NAV).

In addition to the Substitute Basket, the Fund will publish daily on its website the following information:

- Per share for each Fund, the prior Business Day's Intraday NAV, End of Day NAV, and the closing price (Closing Price) or bid/ask price (Bid/Ask Price) of Shares; a calculation of the premium/discount of the Closing Price or Bid/Ask Price against the End of Day NAV; and any other information on the website regarding premium/discounts that other ETFs registered under the 1940 Act may be required to provide;
- The percentage overlap between the Fund's portfolio and the Substitute Basket as of the close of business on the prior trading day (Basket Overlap); and
- The standard deviation over the past three months of the daily proxy spread (i.e., the difference, in percentage terms, between the Substitute Basket's per share NAV and that of the Fund at the end of the trading day) (Tracking Error).

In order for ETF shares to trade in the secondary market in the same manner as traditional, exchange-listed securities, broker-dealers and other market participants need relief from various provisions of the Exchange Act. Historically, the Commission and its staff have provided the relief required by market participants by exemptive order, interpretive letter, or no-action letter. The letters on which the vast majority of ETFs have historically relied (class relief letters) are summarized and linked in sections B.1 and B.2 below.

When proposing the ETF Rule in 2018, the SEC requested comment on whether it should also issue an exemptive order granting the required relief for ETFs that are permissible under the ETF Rule, yet outside the scope of the class relief letters. In essence, the Commission questioned whether it was anomalous to have one regulatory scheme (i.e., the ETF Rule) that permitted an ETF and another regulatory scheme (i.e., the Exchange Act) that did not.

As a result of commenters' support for harmonization, when the SEC adopted the ETF Rule, it also issued an order (the Companion Order), granting conditional exemptions from Section 11(d)(1) of the Exchange Act and Rules 10b-10, 15c1-5, 15c1-6, and 14e-5 under the Exchange Act. Although the exemptions granted in the Companion Order apply to transactions in ETF shares, the beneficiaries of the order are largely the broker-dealers that engage in such transactions. The Companion Order is summarized in Section A below. The full text of the Companion Order can be found at: <https://www.federalregister.gov/documents/2019/10/24/2019-21515/order-granting-a-conditional-exemption-from-exchange-act-section-11d1-and-exchange-act-rules-10b-10>.

While we expect the vast majority of transactions in ETF shares to rely on the Companion Order, we recognize that certain ETFs may not qualify for the Companion Order. Accordingly, this edition of the Handbook — like past editions — includes summaries of and links to the class relief letters as well as the Companion Order. It also includes summaries of and links to the letters granting relief from Section 13(d) of the Exchange Act and Section 16(a) of the Exchange Act, which provide no-action relief with respect to the filing of Schedules 13D and 13G under the Exchange Act and Section 16 reports under the Exchange Act, including Form 3.

#### **A. Order Granting a Conditional Exemption From Exchange Act Section 11(d)(1) and Exchange Act Rules 10b-10, 15c1-5, 15c1-6, and 14e-5 for Certain Exchange Traded Funds**

As noted above, in connection with the adoption of the ETF Rule, the SEC issued the Companion Order, granting an exemption from compliance with Section 11(d)(1) of the Exchange Act and Rules 10b-10, 15c1-5, 15c1-6, and 14e-5 under the Exchange Act. Reliance on the Companion Order is predicated on the applicable ETF satisfying certain conditions.

First, the ETF must rely on the ETF Rule to operate. The relief granted in the Conditional Order is limited to transactions in securities issued by ETFs relying on the ETF Rule because the Commission's findings in support of the Companion Order are based, in part, on an ETF satisfying the requirements of the ETF Rule (e.g., portfolio transparency, website disclosures).

Second, except with respect to the exemption granted from Rule 14e-5, an ETF must meet the diversification requirements applicable to a "regulated investment company" (RIC) in Subchapter M of the Code. This condition is designed to mitigate certain conflicts that a broker-dealer might have if an ETF's portfolio were less diversified (i.e., concentrated in one particular issuer's securities or a small group of issuers' securities).

Finally, with respect to the exemptions granted from Section 11(d) and each of Rules 10b-10, 15c1-5, 15c1-6, and 14e-5, the ETF must satisfy the other conditions detailed below. With respect to transactions in the shares of an ETF that neither satisfies the conditions of a class relief letter nor the conditions of the Companion Order, Commission staff continue to consider bespoke requests for exemptive relief. Except with respect to the exemptions from Section 11(d)(1) for Non-AP Broker-Dealers (as defined below) and in connection with "covered persons" and Rule 14e-5 (as described below), the relief does not apply to purchases or sales of ETF shares in the secondary market.

i. Exemption from Section 11(d)(1)

Under Section 11(d)(1), broker-dealers are generally prohibited from extending or maintaining credit, or arranging for the extension or maintenance of credit, to or for a customer on any security (other than an exempted security) that was part of a distribution of a new issue of securities in which the broker-dealer participated. As ETFs are continuously distributed (and not exempted securities), broker-dealers effecting creation and redemption transactions on behalf of customers are participating in the distribution of new issue securities with respect to shares of ETFs, and thus are continuously subject to the aforementioned restrictions. Section 11(d)(1) issues arise for both broker-dealers acting as authorized participants (Broker-Dealer APs) and those effecting only secondary market transactions (Non-AP Broker-Dealers).

With respect to Broker-Dealer APs: The Companion Order provides an exemption from the new issue lending restriction for a Broker-Dealer AP that extends or maintains credit, or arranges for the extension or maintenance of credit, so long as:

- (1) neither the Broker-Dealer AP, nor any natural person associated with it, directly or indirectly, receives from the "fund complex" (defined to mean the issuer of the ETF shares; any other issuer of ETF shares that holds itself out to investors as a related company for purposes of investment or investor services; any investment adviser, distributor, sponsor, or depositor of any such issuer; or

any affiliated person (as defined in the 1940 Act) of any such issuer or any such investment adviser, distributor, sponsor, or depositor) any payment, compensation, or other economic incentive to promote or sell the ETF's shares to persons outside the fund complex, other than noncash compensation currently permitted under FINRA Rule 2341(l)(5)(A), (B), or (C); and

- (2) the Broker-Dealer AP does not extend, maintain, or arrange for the extension or maintenance of credit to or for a customer on shares of the ETF before 30 days have passed from the date that the ETF's shares initially commence trading (except to the extent that such activity would be otherwise permitted under Rule 11d1-1).

The absence of any special compensation being paid to the Broker-Dealer AP to distribute ETF shares mitigates the potential conflict of interest it may have to use credit to induce customers to buy ETF shares by requiring the Broker-Dealer AP to wait at least 30 days following the launch of an ETF to extend margin on its shares.

With respect to Non-AP Broker-Dealers: The Companion Order states:

Non-AP Broker-Dealers have not undertaken to distribute ETF shares and generally do not receive any compensation for selling ETF shares, other than, in some cases, limited forms of non-cash compensation. Non-AP Broker-Dealers may reasonably be considered not to be participating in the distribution of new issue securities within the meaning of section 11(d)(1). However, to remove any ambiguity about the circumstances when Non-AP Broker-Dealers may offer margin on ETF securities the commission is granting [an] exemption from section 11(d)(1).

The exemption is subject to the condition that Non-AP Broker-Dealers do not (and their associated persons who are natural persons do not), directly or indirectly (including through any affiliate), receive from the fund complex any payment, compensation, or other economic incentive to promote or sell the shares of the ETF to persons outside the fund complex, other than noncash compensation.

ii. Exemption from Rule 10b-10

Rule 10b-10 generally requires a broker-dealer effecting a securities transaction for a customer to send to the customer, at or before completion of the transaction, a written confirmation disclosing, among other things, the identity, price, and number of shares or units (or principal amount) of the security purchased or sold (the 10b-10 Information). When a Broker-Dealer AP engages in in-kind creations and redemptions on behalf of its customers, each tender or receipt of a security as part of the creation or redemption basket (basket security) is technically the purchase or sale of

a security that would require the Broker-Dealer AP to send a confirmation with the 10b-10 Information for each individual security. Under the Companion Order, a Broker-Dealer AP may provide a confirmation that does not contain the 10b-10 Information as to each basket security, so long as: (1) the confirmation contains all of the information specified in Rule 10b-10(a), other than the 10b-10 Information; (2) any confirmation that omits the 10b-10 Information will contain a statement that such omitted information will be provided to the customer upon request; and (3) all such requests will be fulfilled in a timely manner in accordance with Rule 10b-10(c) (i.e., within five to 15 days, depending on the circumstances).

iii. Exemption from Rules 15c1-5 and 15c1-6

Rule 15c1-5 requires a broker-dealer effecting a transaction to disclose any control relationship with an issuer of a security that it purchases for or sells to a customer. Rule 15c1-6 requires a broker-dealer to disclose its participation or interest in a primary or secondary distribution of a security that it purchases for or sells to a customer. These rules would require Broker-Dealer APs to make these disclosures to customers for whom they are effecting in-kind creation and redemption transactions with respect to each basket security. To rely on the exemption, the broker-dealer must provide, upon request, any information to which a customer is entitled under Rule 15c1-5 or 15c1-6 and must fulfill such requests in a timely manner. This condition is intended to ensure that any customers who would like to access this information will be able to receive it.

As previously noted, the exemption from Rules 15c1-5 and 15c1-6 is available only with respect to transactions involving an ETF that meets the diversification requirement applicable to a RIC. The composite nature of a diversified basket means that the securities of any one issuer will account for a relatively small share of the basket. Diversification is intended to, among other things, mitigate any conflicts that a broker-dealer would otherwise be required to disclose under Rules 15c1-5 and 15c1-6, and help promote investor protection.

iv. Exemption from Rule 14e-5

Rule 14e-5 is one of the “tender offer rules” in the federal securities laws. A “tender offer,” in the simplest terms, refers to an offer by an issuer or third party to purchase some of the issuer’s outstanding securities. The tender offer rules are designed to ensure that investors who are solicited in connection with a tender offer are provided complete disclosure about the tender offer and that the tender offer is conducted in a manner that is fair to investors.

To this end, the tender offer rules, among other things, prohibit “covered persons” from, directly or indirectly, purchasing or arranging to purchase any securities that are the subject of a tender offer (subject securities) or

any securities that are immediately convertible into, exchangeable for, or exercisable for such securities (related securities, and together with subject securities, tender offer securities), except as part of such tender offer. Under the tender offer rules, a dealer-manager of a tender offer is a covered person, and any person acting, directly or indirectly, in concert with a covered person is also a covered person. Thus, to the extent any broker-dealer is both a Broker-Dealer AP of an ETF and a dealer-manager in a tender offer for one of the ETF's basket securities, the tender offer rules may prohibit the Broker-Dealer AP from engaging in in-kind creation unit transactions involving such basket security (because it is also a tender offer security). In addition, they may prohibit the ETF and legal entity of which the ETF is a series (e.g., a statutory trust of the series type) (Series Trust) from engaging in in-kind creation unit transactions involving such security. The Companion Order provides an exemption from Rule 14e-5 under these circumstances for the ETF, the Series Trust, authorized participants, and any other persons that create and redeem shares of the ETF in creation units pursuant to contractual arrangements pertaining to such legal entity and the ETF and that are covered persons with respect to a tender offer involving an ETF's basket securities — subject to a series of conditions.

First, no purchase of tender offer securities by a broker-dealer acting as a dealer-manager of a tender offer may be done for the purpose of facilitating a tender offer. Second, if there is a change in an ETF's basket securities and a broker-dealer acting as a dealer-manager of a tender offer is unable to rely on the exception in Rule 14e-5(b)(5) for basket transactions that include a tender offer security because (1) the basket contains fewer than 20 securities, or (2) the tender offer securities make up more than 5% of the value of the basket, then any purchases of a basket security by such dealer-manager during a tender offer must be effected for the purpose of adjusting a basket of securities in the ordinary course of its business and not for the purpose of facilitating a tender offer. Finally, except for the relief specifically granted in the Companion Order, any broker-dealer acting as a dealer-manager of a tender offer must comply with all of the provisions of Rule 14e-5.

## **B. Class Relief Letters**

### **1. Class Relief for Index ETFs**

- a. Letter from James A. Brigagliano, Assistant Director, Division of Market Regulation, to Claire P. McGrath, Vice President and Special Counsel, American Stock Exchange, dated 17 August 2001 (2001 Class Letter)

The 2001 Class Letter grants a variety of exemptive, interpretive, or no-action relief for index-based ETFs that track domestic indexes of listed securities and that, among other things, as of each rebalance date, hold 20 or more different index securities where no one security represents more than 25% of total assets and that invest 75 – 85% of assets in securities that have had a minimum public float of US\$150 million and minimum

average daily trading volume of US\$1 million over the last two months. For such ETFs, provided that they issue creation units of at least 50,000 shares worth at least US\$1 million, the 2001 Class Letter grants relief from Section 11(d)(1) and Rule 11d1-2 to permit ETF shares to be used for margin after being held for 30 days. It provides relief from Regulation M to permit broker-dealers involved in the distribution of a security that is a component of an ETF's underlying index to conduct certain transactions in ETF shares. The letter exempts ETF shares from the "tick" requirement of Rule 10a-1. With respect to confirmation statements, it provides relief from Rule 10b-10 to allow broker-dealers to deliver statements that do not list the index securities exchanged for (a creation unit of) ETF shares. Further, it exempts ETFs from compliance with Rule 10b-17, recognizing that they are not able to provide notice of certain corporate actions (such as distributions) at least 10 days in advance. The letter provides relief from the tender offer rules for broker-dealers who are involved in a tender offer for an index security to permit them to conduct certain transactions in ETF shares.

Similarly, under Rules 15c1-5 and 15c1-6, the letter excuses broker-dealers, who have an interest in or are affiliated with an issuer whose securities are in the index underlying an ETF, from certain notice requirements.

The full text of the letter can be accessed at: <https://www.sec.gov/divisions/marketreg/mr-noaction/etifclassrelief081701-msr.pdf>.

- b. Letter from James A. Brigagliano, Assistant Director, Division of Market Regulation, to Ira Hammerman, Senior Vice President and General Counsel, Securities Industry Association, dated 3 January 2005 (Reg SHO Class Letter)

The Reg SHO Class Letter allows broker-dealers, under certain circumstances, to mark short sales of ETF shares as "short" rather than "short exempt." The conditions for relief are that (i) for each exempt short sale, the various market centers that execute such sales must have instituted procedures to "mask" the short sale character of the transaction so that they are executed as short exempt; (ii) such market centers must monitor on a regular basis to confirm that any such product or transaction continues to meet the conditions for the exemptive relief and reinstitute the price test for any product or transaction that fails to satisfy such conditions; (iii) a broker-dealer executing exempt short sales must mark such sales as "short," and in no event will such sales be marked "long;" and (iv) the market centers will maintain an audit trail of all such trade executions, which is capable of being produced and subject to review upon request by the SEC and other appropriate regulatory authorities.

The full text of the letter can be accessed at: <https://www.sec.gov/divisions/marketreg/mr-noaction/sia010305.htm>.

- c. Letter from Catherine McGuire, Chief Counsel, Division of Market Regulation, to the Securities Industry Association Derivatives Products Committee, dated 21 November 2005 (2005 Class Letter)

The 2005 Class Letter expands the relief provided by the 2001 Class Letter in several respects. First, the 2005 Class Letter makes relief available to all “Qualifying ETFs” and defines such term to mean ETFs that hold 20 or more different index securities where no one security represents more than 25% of total assets and where all index securities are publicly available. The letter then provides relief to Qualifying ETFs from Rule 10b-10 to allow broker-dealers to deliver confirmation statements that do not list the index securities exchanged for (a creation unit of) ETF shares, and from Rules 15c1-5 and 15c1-6 to excuse broker-dealers, who have an interest in or are affiliated with an issuer whose securities are in the index underlying an ETF, from certain notice requirements. In addition, the 2005 Class Letter expands the relief from Section 11(d)(1) and Rule 11d1-2 to permit broker-dealers, whether or not an authorized participant in an ETF’s shares, to extend credit (or margin) on the ETF shares, provided that the broker-dealer does not receive certain types of compensation for promoting such ETF shares.

The full text of the letter can be accessed at: <https://www.sec.gov/divisions/marketreg/mr-noaction/sia112105.htm>.

- d. Letter from James A. Brigagliano, Acting Associate Director, Division of Market Regulation, to Stuart M. Strauss, Clifford Chance LLP, dated 24 October 2006 (Equity Class Letter)

The Equity Class Letter grants a variety of exemptive, interpretive, or no-action relief to (domestic or international) index ETFs that track indexes, all of the components of which are subject to last sale trade reporting, and that, among other things, as of each rebalance date, hold 20 or more different index securities where no one security represents more than 25% of total assets and that invest 50 – 70% of assets in securities that have had a minimum public float of US\$150 million and minimum average daily trading volume of US\$1 million over the last two months. For such ETFs, provided that they issue creation units of at least 50,000 shares worth at least US\$1 million, the Equity Class Letter grants relief from Regulation M to permit broker-dealers involved in the distribution of a security that is a component of such an ETF’s underlying index to conduct certain transactions in ETF shares. The letter also exempts such ETF shares from the “tick” requirement of Rule 10a-1 and allows broker-dealers, under certain circumstances, to mark short sales of such ETF shares as “short” rather than “short exempt.” Further, the Equity Class Letter exempts ETFs from compliance with Rule 10b-17, recognizing that they are not able to provide notice of certain corporate actions (such as distributions) at least

10 days in advance. In addition, the letter provides relief from the tender offer rules for broker-dealers who are involved in a tender offer for an index security to permit them to conduct certain transactions in ETF shares.

The full text of the letter can be accessed at: <https://www.sec.gov/divisions/marketreg/mr-noaction/etifclassrelief102406-msr.pdf>.

- e. Letter from James A. Brigagliano, Associate Director, Division of Market Regulation, to Benjamin Haskin, Willkie Farr & Gallagher, LLP, dated 9 April 2007 (Fixed Income Class Letter)

The Fixed Income Class Letter generally grants a variety of exemptive, interpretive, or no-action relief to fixed income index ETFs, provided that they invest in at least 13 unaffiliated issuers and issue creation units of at least 50,000 shares worth at least US\$1 million. More specifically, the letter exempts all fixed income index ETF shares from the “tick” requirement of Rule 10a-1 and allows broker-dealers, under certain circumstances, to mark short sales of fixed income ETF shares as “short” rather than “short exempt.” Further, the Fixed Income Class Letter exempts fixed income index ETFs from compliance with Rule 10b-17, recognizing that they are not able to provide notice of certain corporate actions (such as distributions) at least 10 days in advance. In addition, provided that no component of a fixed income index ETF’s underlying index, except a US Treasury security, represents more than 30% of the weight of the ETF and the five largest components do not represent more than 65% of the weight of the ETF, the letter grants relief from Regulation M to permit broker-dealers involved in the distribution of a security that is a component of the underlying index to conduct certain transactions in ETF shares.

The full text of the letter may be accessed at: <https://www.sec.gov/divisions/marketreg/mr-noaction/2007/fietfclassrelief040907-msr.pdf>.

- f. Letter from Josephine J. Tao, Assistant Director, Division of Trading & Markets, to Domenick Pugliese, Paul, Hastings, Janofsky & Walker LLP, dated 27 June 2007 (Combination Class Letter)

In the Combination Class Letter, the SEC Staff confirms that an ETF, which tracks an index that includes each of an equity and fixed income component, may rely on the Equity Class Letter with respect to the former and the Fixed Income Class Letter with respect to the latter, provided that the equity component meets the criteria established by the Equity Class Letter and the fixed income component meets the criteria established by the Fixed Income Class Letter. In addition, the letter confirms that such “combination” index ETFs may invest in cash and money market instruments.

The full text of the letter can be accessed at: <https://www.sec.gov/divisions/marketreg/mr-noaction/2007/combinationetfs062707-msr.pdf>.

**2. Class Relief for Transparent, Actively Managed ETFs**

- a. Frequently Asked Questions About Regulation M, Staff Legal Bulletin No. 9 (revised 22 November 2019) (SLB 9)

SLB 9 sets forth the views of the Division of Market Regulation in response to questions raised about various provisions of Regulation M. With respect to ETFs, it provides guidance on three discrete questions. First, it confirms that the Rule 101(c)(4) exception is available to permit persons who may be deemed to be participating in a distribution of actively managed ETF shares to bid for and purchase such ETF shares during the distribution. Second, it confirms that the redemption of an actively managed ETF creation unit, and the receipt of securities in exchange therefor, by persons who may be deemed to be participating in a distribution of the ETF's shares does not constitute an "attempt to induce any person to bid for or purchase" a covered security during an applicable restricted period, provided that the redemption is not made for the purpose of creating actual, or apparent, trading volume in or affecting the price of either the ETF shares or the securities received in exchange therefor. Finally, SLB 9 confirms that the Rule 102(d)(4) exception is available to ETFs to permit redemptions of actively managed ETF shares. Among other things, certain of the relief is conditioned on the ETF portfolio being transparent so as to facilitate the ETF arbitrage mechanism, including "workable hedges," which result in a "close alignment" between the ETF's NAV and the market price of its shares.

The full text of SLB 9 can be accessed at: <https://www.sec.gov/interps/legal/mrslb9.htm>.

- b. Letter from Josephine J. Tao, Assistant Director, Division of Trading and Markets, to Richard F. Morris, Deputy General Counsel, WisdomTree Asset Management, Inc., dated 9 May 2008 (Active Class Letter)

The Active Class Letter grants a variety of exemptive, interpretive, or no-action relief to actively managed ETFs, provided that, among other things, they issue creation units of at least 50,000 shares and invest substantially all of their assets in nonconvertible fixed income securities and US or non-US money market securities that are rated investment grade by one nationally recognized statistical rating organization. Further, no portfolio security held by such an ETF can represent more than 30% of its weight and the five largest holdings cannot represent more than 65% of its weight, in each case exclusive of US government securities and sovereign debt. In addition, such an ETF must otherwise invest in a diversity of issuers, make its portfolio fully transparent on a daily basis, and provide website disclosure of the premiums and discounts at which its shares have traded relative to net asset value. With respect to ETFs that meet the criteria set forth in the Active Class Letter, it exempts them from the "tick" requirement of Rule 10a-1 and allows such ETFs to be treated as "Qualifying ETFs" within the meaning of the 2005 Class Letter.

In this respect, the Active Class Letter provides such ETFs with relief from Section 11(d)(1) and Rule 11d1-2 to permit broker-dealers to extend margin on the shares after being held for 30 days, whether or not the broker-dealer is an authorized participant in the ETF's shares, provided that the broker-dealer does not receive certain types of compensation for promoting such ETF shares. With respect to confirmation statements, the Active Class Letter provides relief from Rule 10b-10 to allow broker-dealers to deliver statements that do not list the portfolio securities exchanged for (a creation unit of) ETF shares. Finally, under Rules 15c1-5 and 15c1-6, the letter excuses broker-dealers, who have an interest in or are affiliated with an issuer whose securities are in the ETF portfolio, from certain notice requirements.

The full text of the letter can be accessed at: <https://www.sec.gov/divisions/marketreg/mr-noaction/2008/wisdomtree050908-msr.pdf>.

- c. Order Granting a Limited Exemption From Exchange Act Rule 10b-17 to Certain Actively Managed Exchange-Traded Funds Pursuant to Exchange Act Rule 10b-17(b)(2), Exchange Act Release No. 67215 (19 June 2012) (10b-17 Class Order)

The 10b-17 Class Order allows actively managed ETFs to give delayed notice of the existence and timing of a distribution, provided that the ETF provides such information to its listing exchange as soon as practicable before trading begins on the ex-dividend date, and in no event later than the time when the exchange last accepts information relating to distributions on the day before the ex-dividend date.

The full text of the order can be accessed at: <https://www.federalregister.gov/documents/2012/06/25/2012-15410/order-granting-a-limited-exemption-from-exchange-act-rule-10b-17-to-certain-actively-managed>.

- d. Letter from Joseph Furey, Acting Co-Chief Counsel, Division of Trading & Markets, to W. John McGuire, Morgan, Lewis & Bockius LLP, dated 16 June 2011 (ETF of ETFs Class Letter)

Pursuant to this ETF of ETFs Class Letter, ETFs that invest in other ETFs (and other types of exchange-traded products (ETPs)) are permitted to be treated as "Qualifying ETFs" within the meaning of the 2005 Class Letter, provided that each underlying ETF (and ETP) meets one of the class letters described above or is permitted to rely on individualized relief from the same provisions of the 1934 Act and further provided that the ETF of ETFs invests exclusively in such ETFs (and ETPs) and US government securities and limits any other holdings to 20% or less of its total assets. To the extent that an ETF of ETFs qualifies to rely on the ETF of ETFs Class Letter, broker-dealers have relief from Section 11(d)(1) and Rule 11d1-2 and, therefore, may extend margin on its shares after they are held for 30 days, whether or not the broker-dealer is an authorized participant in the ETF's shares, provided that the broker-dealer does not receive certain types of

compensation for promoting such ETF shares. Further, with respect to confirmation statements, under the ETF of ETFs Class Letter, broker-dealers have relief from Rule 10b-10 and, therefore, may deliver confirmation statements that do not list the portfolio securities exchanged for (a creation unit of) ETF shares. Finally, under Rules 15c1-5 and 15c1-6, the letter effectively excuses broker-dealers, who have an interest in or are affiliated with an issuer whose securities are in the ETF of ETFs' portfolio, from certain notice requirements.

The full text of the letter can be accessed at: <https://www.sec.gov/divisions/marketreg/mr-noaction/2011/advisorsharesmadrona061611.pdf>.

### **C. Section 13(d) and Section 16(a) of the 1934 Act**

1. Letter from James J. Maloney, Special Counsel, Division of Corporation Finance, and Evan Geldzahler, Senior Counsel, Division of Investment Management, re PDR Services LLC, dated 14 December 1998

With respect to the shares of unit investment trusts, which operate as ETFs, the SEC Staff agreed not to recommend enforcement action against beneficial owners who do not file reports under Section 13(d) of the 1934 Act, provided that the ETF shares continue to trade at prices that do not "materially deviate" from the relevant trust's net asset value.

2. Letter from Anne M. Krauskopf, Special Counsel, Division of Corporation Finance, and Evan Geldzahler, Senior Counsel, Division of Investment Management, re Select Sector SPDR Trust, dated 6 May 1999

With respect to the shares of open-end management investment companies, which operate as ETFs, the SEC Staff agreed not to recommend enforcement action against beneficial owners who do not file reports under Section 16(a) of the 1934 Act, provided that the ETF shares continue to trade at prices that do not "materially deviate" from the relevant trust's net asset value.

The full text of the letter can be accessed at: <https://www.sec.gov/divisions/investment/noaction/1999/selectsectorspdr050699.pdf>.

As exchange-listed securities, ETFs are required to comply with the rules of the national securities exchange on which their shares are listed. Among such exchange rules are “generic listing standards” with which an ETF may comply to list its shares without obtaining a bespoke listing rule approved by the SEC. The body of this chapter is comprised of extracts of the currently effective generic listing standards of Cboe BZX Exchange, Inc., The Nasdaq Stock Market LLC, and NYSE Arca, Inc., as well as the proposed generic listing standards of Texas Stock Exchange LLC as filed with the Commission in Exhibit B-1 of Amendment No. 2 to its Form 1 application for registration as a national securities exchange. For ease of reference, the authors have organized such listing standards in alphabetical order by exchange.

Section A of this chapter extracts from the various exchanges’ rules the generic listing standards for ETFs that operate in reliance on Rule 6c-11 under the 1940 Act (the ETF Rule). Those rules are Cboe BZX Exchange, Inc. Rule 14.11(l), The Nasdaq Stock Market LLC Rule 5704, NYSE Arca, Inc. Rule 5.2-E(j)(8), and, as proposed, Texas Stock Exchange LLC Rule 17.104.

Section B of this chapter extracts from the same exchanges’ rules the generic listing standards for non-transparent actively managed ETFs that either utilize a proxy portfolio or tracking basket methodology or a verified intraday indicative value methodology. Those rules are Cboe BZX Exchange, Inc. Rules 14.11(k) and (m), The Nasdaq Stock Market LLC Rules 5750 and 5760, NYSE Arca, Inc. Rule 8.601-E and 8.900-E, and, as proposed, Texas Stock Exchange LLC Rules 17.150 and 17.160.

To provide guidance on the application of their rules to ETFs and other exchange-traded products, each of Cboe BZX Exchange, Inc., The Nasdaq Stock Market LLC, and NYSE Arca, Inc. issues a compliance guide or similar document, which can be accessed at the following addresses:

The full text of the Cboe BZX Exchange, Inc.’s “ETP Listings Compliance Guidance” can be accessed at: [https://cdn.cboe.com/resources/listings/Cboe\\_BZX\\_Exchange\\_ETP\\_Listings\\_Compliance\\_Guide.pdf](https://cdn.cboe.com/resources/listings/Cboe_BZX_Exchange_ETP_Listings_Compliance_Guide.pdf).

The full text of The Nasdaq Stock Market LLC’s “Listing Guide: Exchange-Traded Products” can be accessed at: [https://listingcenter.nasdaq.com/assets/ETP\\_Listing\\_Guide.pdf](https://listingcenter.nasdaq.com/assets/ETP_Listing_Guide.pdf) and the “Nasdaq ETP Regulation Updates and Important Reminders” can be accessed at [https://listingcenter.nasdaq.com/assets/Nasdaq\\_ETP\\_Update\\_2025.pdf](https://listingcenter.nasdaq.com/assets/Nasdaq_ETP_Update_2025.pdf).

The full text of the NYSE Arca, Inc.’s Rule Interpretations can be accessed at: <https://www.nyse.com/regulation/rule-interpretations?market=NYSE%20Arca%20Equities> and full text of the “Listed ETP Compliance Guidance” can be accessed at [https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/2025\\_NYSE\\_Arca\\_Listed\\_ETP\\_Compliance\\_Guidance\\_Letter.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/2025_NYSE_Arca_Listed_ETP_Compliance_Guidance_Letter.pdf).

The Texas Stock Exchange LLC has not yet issued a compliance guide or similar document.

**A. Generic Listing Standards for Transparent ETFs**

1. Cboe BZX Exchange Inc.

**Rule 14.11 Other Securities****(a) Preamble to the Listing Requirements for Other Securities**

This Rule contains the requirements for listing other securities on the Exchange, including Exchange Traded Funds, Portfolio Depository Receipts, Index Fund Shares, and various other types of securities, as set forth below (collectively, "Other Securities"). A Company with securities listed under this Rule 14.11 must provide the Exchange with prompt notification after the Company becomes aware of any noncompliance by the Company with the requirements of Rule 14.11. The Exchange may submit a rule filing pursuant to Section 19(b) of the Act to permit the listing of a series of Other Securities that does not otherwise meet the respective standards set forth in this Rule 14.11. The Exchange may also be required to submit a rule filing pursuant to Section 19(b) of the Act to permit the listing of certain types of Other Securities, as provided in this Rule 14.11. In either case, any of the statements or representations regarding the index composition, the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, intraday indicative values, and Verified Intraday Indicative Values (as applicable), or the applicability of Exchange listing rules specified in any filing to list a series of Other Securities (collectively, "Continued Listing Representations") shall constitute continued listing requirements for the securities listed on the Exchange.

\* \* \*

**(l) Exchange-Traded Fund Shares**

- 1) Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, the shares of Exchange-Traded Funds ("ETF Shares") that meet the criteria of this Rule 14.11(l).
- 2) Applicability. This Rule 14.11(l) is applicable only to ETF Shares. Except to the extent inconsistent with this Rule 14.11(l), or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on the Exchange of such securities. ETF Shares are included within the definition of "security" or "securities" as such terms are used in the Rules of the Exchange.
  - A. Transactions in ETF Shares will occur throughout the Exchange's trading hours.
  - B. Surveillance Procedures. The Exchange will implement and maintain written surveillance procedures for ETF Shares.

- 3) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:
- A. ETF Shares. The term “ETF Shares” means shares of stock issued by an Exchange-Traded Fund.
  - B. Exchange-Traded Fund. The term “Exchange-Traded Fund” has the same meaning as the term “exchange-traded fund” as defined in Rule 6c-11 under the Investment Company Act of 1940.
  - C. Reporting Authority. The term “Reporting Authority” in respect of a particular series of ETF Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of ETF Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, the amount of any dividend equivalent payment or cash distribution to holders of ETF Shares, net asset value, index or portfolio value, the current value of the portfolio of securities required to be deposited in connection with issuance of ETF Shares, or other information relating to the issuance, redemption or trading of ETF Shares. A series of ETF Shares may have more than one Reporting Authority, each having different functions.
- 4) Initial and Continued Listing. The Exchange may approve a series of ETF Shares for listing and/or trading (including pursuant to unlisted trading privileges) on the Exchange pursuant to Rule 19b-4(e) under the Act, provided such series of ETF Shares is eligible to operate in reliance on Rule 6c-11 under the Investment Company Act of 1940 and must satisfy the requirements of this Rule 14.11(l) on an initial and continued listing basis.
- A. The requirements of Rule 6c-11 must be satisfied by a series of ETF Shares on an initial and continued listing basis. Such securities must also satisfy the following criteria on an initial and, except for paragraph (i) below, continued, listing basis:
    - i. For each series, the Exchange will establish a minimum number of ETF Shares required to be outstanding at the time of commencement of trading on the Exchange;
    - ii. If an index underlying a series of ETF Shares is maintained by a broker-dealer or fund adviser, the broker-dealer or fund adviser shall erect and maintain a “fire wall” around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer or fund adviser. If the investment adviser to the investment company issuing an actively managed series of ETF Shares is affiliated with a broker-dealer, such

investment adviser shall erect and maintain a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Exchange-Traded Fund’s portfolio; and

- iii. Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the composition, methodology, and related matters of an index underlying a series of ETF Shares, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable index. For actively managed Exchange-Traded Funds, personnel who make decisions on the portfolio composition must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the applicable portfolio.
- B. Continued Listing. Each series of ETF Shares will be listed and traded on the Exchange subject to application of the following continued listing criteria:
- i. Suspension of trading or removal. The Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 14.12 for, a series of ETF Shares under any of the following circumstances:
    - a. if the Exchange becomes aware that the issuer of the ETF Shares is no longer eligible to operate in reliance on Rule 6c-11 under the Investment Company Act of 1940;
    - b. if any of the other listing requirements set forth in this Rule 14.11(l) are not continuously maintained;
    - c. if, following the initial twelve month period after commencement of trading on the Exchange of a series of ETF Shares, there are fewer than 50 beneficial holders of the series of ETF Shares for 30 or more consecutive trading days; or
    - d. if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.
  - ii. Termination. Upon termination of an investment company, the Exchange requires that ETF Shares issued in connection with such entity be removed from Exchange listing.

- 5) Limitation of Exchange Liability. Neither the Exchange, the Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current index or portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of ETF Shares; the amount of any dividend equivalent payment or cash distribution to holders of ETF Shares; net asset value; or other information relating to the purchase, redemption, or trading of ETF Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.
- 6) A security that has previously been approved for listing on the Exchange pursuant to the generic listing requirements specified in Rule 14.11(c) or Rule 14.11(i), or pursuant to the approval of a proposed rule change or subject to a notice of effectiveness by the Commission, may be considered for listing solely under this Rule 14.11(l) if such security is eligible to operate in reliance on Rule 6c-11 under the 1940 Act. At the time of listing of such security under this Rule 14.11(l), the continued listing requirements applicable to such previously-listed security will be those specified in paragraph (b) of this Rule 14.11(l). Any requirements for listing as specified in Rule 14.11(c) or Rule 14.11(i), or an approval order or notice of effectiveness of a separate proposed rule change, that differ from the requirements of this Rule 14.11(l) will no longer be applicable to such security.

## 2. Nasdaq Stock Market LLC

## 5704. Exchange Traded Fund Shares

## (a) Exchange Traded Fund Shares

- (1) Definitions. For the purpose of this Rule 5704, the following terms shall have the meaning herein specified:
- (A) Exchange Traded Funds. The term “Exchange Traded Fund” has the same meaning as the term “exchange-traded fund” has in Rule 6c-11 under the Investment Company Act of 1940.
  - (B) Exchange Traded Fund Share. The term “Exchange Traded Fund Share” has the same meaning as it has in Rule 6c-11 under the Investment Company Act of 1940.
  - (C) Reporting Authority. The term “Reporting Authority” in respect of a particular series of Exchange Traded Fund Shares means Nasdaq, a wholly-owned subsidiary of Nasdaq, or an institution or reporting service designated by Nasdaq or its subsidiary as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of any securities required to be deposited in connection with issuance of Exchange Traded Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Exchange Traded Fund Shares, net asset value, and other information relating to the issuance, redemption or trading of Exchange Traded Fund Shares.

Nothing in this paragraph shall imply that an institution or reporting service that is the source for calculating and reporting information relating to Exchange Traded Fund Shares must be designated by Nasdaq; the term “Reporting Authority” shall not refer to an institution or reporting service not so designated.

- (b) Nasdaq may approve a series of Exchange Traded Fund Shares for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934, provided each series of Exchange Traded Fund Shares is eligible to operate in reliance on Rule 6c-11 under the Investment Company Act of 1940 and must satisfy the requirements of this Rule 5704 on an initial and continued listing basis.
  - (1) Initial and Continued Listing. Each series of Exchange Traded Fund Shares must also satisfy the following criteria on an initial and continued listing (except for paragraph (A) below) basis:
    - (A) Initial Shares Outstanding. For each series of Exchange Traded Fund Shares, Nasdaq will establish a minimum number of Exchange Traded Fund Shares required to be outstanding at the time of commencement of trading on Nasdaq.

- (B) Dissemination of Information. All requirements set forth in this paragraph must be satisfied on both an initial and continued listing basis.
- (i) If the investment adviser to an Exchange Traded Fund is affiliated with a broker-dealer, such investment adviser shall erect and maintain a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to the underlying portfolio. Personnel who make decisions on the Exchange Traded Fund’s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Exchange Traded Fund portfolio.
  - (ii) The Reporting Authority that provides the Exchange Traded Fund’s portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.
  - (iii) If the index underlying a series of Exchange Traded Fund Shares is maintained by a broker-dealer or fund adviser, the broker-dealer or fund adviser shall erect and maintain a “fire wall” around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer or fund adviser;
  - (iv) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.
- (C) Regular market session trading will occur between 9:30 a.m. and either 4:00 p.m. or 4:15 p.m. for each series of Exchange Traded Fund Shares, as specified by Nasdaq. In addition, Nasdaq may designate a series of Exchange Traded Fund Shares for trading during a pre-market session beginning at 4:00 a.m. and/or a post-market session ending at 8:00 p.m.
- (D) The minimum price variation for quoting and entry of orders in Exchange Traded Fund Shares is \$0.01.

- (2) Suspension of trading and removal. Nasdaq will consider the suspension of trading in, and will initiate delisting proceedings under the Rule 5800 Series of, a series of Exchange Traded Fund Shares under any of the following circumstances:
- (A) if Nasdaq becomes aware that the series of Exchange Traded Fund Shares is no longer eligible to operate in reliance on Rule 6c-11 under the Investment Company Act of 1940;
  - (B) if, following the initial twelve month period after commencement of trading on Nasdaq of a series of Exchange Traded Fund Shares, there are fewer than 50 beneficial holders of such series of Exchange Traded Fund Shares;
  - (C) if any of the other requirements set forth in this Rule 5704 are not continuously maintained; or
  - (D) if such other event shall occur or condition exists which in the opinion of Nasdaq, makes further dealings on Nasdaq inadvisable.
- (c) Surveillance Procedures. Nasdaq will implement and maintain written surveillance procedures for Exchange Traded Fund Shares.
- (d) Termination. Upon termination of an Exchange Traded Fund, Nasdaq requires that each series of Exchange Traded Fund Shares issued in connection with such entity be removed from listing.
- (e) Neither Nasdaq, the Reporting Authority, nor any agent of Nasdaq shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current index or portfolio value, the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of a series of Exchange Traded Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of a series of Exchange Traded Fund Shares; net asset value; or other information relating to the purchase, redemption or trading of a series of Exchange Traded Fund Shares, resulting from any negligent act or omission by Nasdaq, the Reporting Authority or any agent of Nasdaq, or any act, condition or cause beyond the reasonable control of Nasdaq, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in one or more underlying securities.

- (f) A security that has previously been approved for listing on the Exchange pursuant to the generic listing requirements specified in Rule 5705(b) or Rule 5735(b)(1), or pursuant to an approval of a proposed rule change or subject to a notice of effectiveness by the Commission, may be considered for listing solely under this Rule 5704 if such security is eligible to operate in reliance on Rule 6c-11 under the Investment Company Act of 1940. At the time of listing of such security under this Rule 5704, the continued listing requirements applicable to such security will be those specified in paragraph (b) of this Rule 5704. Any requirements for listing as specified in Rule 5705(b) or 5735(b)(1), or an approval order or notice of effectiveness of a separate proposed rule change, that differ from the requirements of this Rule 5704 will no longer be applicable to such security.

**Adopted:** April 3, 2020 (SR-NASDAQ-2019-090).

\* \* \*

## 3. NYSE Arca, Inc.

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

- (a) The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Exchange-Traded Fund Shares that meet the criteria of this Rule.
- (b) **Applicability.** This Rule is applicable only to Exchange-Traded Fund Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, Exchange rules will be applicable to the trading on the Exchange of such securities. Exchange-Traded Fund Shares are included within the definition of NMS Stock as defined in Rule 1.1.
- (c) **Definitions.** The following are definitions for purposes of this Rule:
  - (1) “1940 Act” means the Investment Company Act of 1940, as amended.
  - (2) “Exchange-Traded Fund” has the same meaning as the term “exchange-traded fund” as defined in Rule 6c-11(a)(1) under the 1940 Act.
  - (3) “Exchange-Traded Fund Share” means a share of stock issued by an Exchange-Traded Fund.
  - (4) “Reporting Authority” means, in respect of a particular series of Exchange-Traded Fund Shares, the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Exchange-Traded Fund Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value, the current value of the portfolio of any securities required to be deposited in connection with issuance of Exchange-Traded Fund Shares, the amount of any dividend equivalent payment or cash distribution to holders of Exchange-Traded Fund Shares, net asset value, or other information relating to the issuance, redemption or trading of Exchange-Traded Fund Shares. A series of Exchange-Traded Fund Shares may have more than one Reporting Authority, each having different functions.
- (d) **Limitation of Exchange Liability.** Neither the Exchange, the Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current index or portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Exchange-Traded Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Exchange-Traded Fund Shares; net asset value; or other information relating to the purchase, redemption, or trading of Exchange-Traded Fund

Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

- (e) The Exchange may approve Exchange-Traded Fund Shares for listing and/or trading (including pursuant to unlisted trading privileges) pursuant to Rule 19b-4(e) under the Exchange Act. Each series of Exchange-Traded Fund Shares must be eligible to operate in reliance on Rule 6c-11 under the 1940 Act and must satisfy the requirements of Rule 5.2-E(j)(8) upon initial listing and, except for subparagraph (1)(A) of Rule 5.2-E(j)(8)(e), on a continuing basis. An issuer of such securities must notify the Exchange of any failure to comply with such requirements.
  - (1) Initial and Continued Listing — Exchange-Traded Fund Shares will be listed and traded on the Exchange subject to the requirement that the investment company issuing a series of Exchange-Traded Fund Shares is eligible to operate in reliance on the requirements of Rule 6c-11(c) under the 1940 Act on an initial and continued listing basis.
    - (A) Initial Shares Outstanding. For each series of Exchange-Traded Fund Shares, the Exchange will establish a minimum number of Exchange-Traded Fund Shares required to be outstanding at the time of commencement of trading on the Exchange.
  - (2) Suspension of trading or removal. The Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 5.5-E(m) of, a series of Exchange-Traded Fund Shares under any of the following circumstances:
    - (A) if the Exchange becomes aware that the investment company is no longer eligible to operate in reliance on Rule 6c-11;
    - (B) if the investment company no longer complies with the requirements set forth in Rule 5.2-E(j)(8);
    - (C) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Exchange-Traded Fund Shares, there are fewer than 50 beneficial holders of such series of Exchange-Traded Fund Shares; or
    - (D) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

- (f) Transactions in Exchange-Traded Fund Shares will occur during the trading hours specified in Rule 7.34-E(a).
- (g) Surveillance Procedures. The Exchange will implement and maintain written surveillance procedures for Exchange-Traded Fund Shares.
- (h) Termination. Upon termination of an investment company issuing Exchange-Traded Fund Shares, the Exchange requires that Exchange-Traded Fund Shares issued in connection with such entity be removed from Exchange listing.

**Commentary:**

- .01 A security that has previously been approved for listing on the Exchange pursuant to the generic listing requirements specified in Rule 5.2-E(j)(3) or Commentary .01 to Rule 8.600-E, or pursuant to a proposed rule change approved or subject to a notice of effectiveness by the Commission, may be considered approved for listing solely under Rule 5.2-E(j)(8) if such security is eligible to operate in reliance on Rule 6c-11 under the 1940 Act. Once so approved for listing, the continued listing requirements applicable to such previously-listed security will be those specified in paragraph (e) of Rule 5.2-E(j)(8). Any requirements for listing as specified in Rule 5.2-E(j)(3) or Commentary .01 to Rule 8.600-E, or an approval order or notice of effectiveness of a separate proposed rule change that differ from the requirements of Rule 5.2-E(j)(8) will no longer be applicable to such security.
- .02 The following requirements shall be met by series of Exchange-Traded Fund Shares on an initial and continued listing basis:
  - (a) With respect to series of Exchange-Traded Fund Shares that are based on an index:
    - (1) If the underlying index is maintained by a broker-dealer or fund adviser, the broker-dealer or fund adviser will erect and maintain a “fire wall” around the personnel who have access to information concerning changes and adjustments to the index and the index will be calculated by a third party who is not a broker-dealer or fund adviser.
    - (2) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable index.
  - (b) With respect to series of Exchange-Traded Fund Shares that are actively managed, if the investment adviser to the investment company issuing Exchange-Traded Fund Shares is affiliated with a broker-dealer, such investment adviser will erect and maintain a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning

the composition and/or changes to such Exchange-Traded Fund's portfolio. Personnel who make decisions on the Exchange-Traded Fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Exchange-Traded Fund portfolio. The Reporting Authority that provides information relating to the portfolio of a series of Exchange-Traded Fund Shares must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of such portfolio.

**Adopted:** April 13, 2020 (NYSEArca-2019-81).

## 4. Texas Stock Exchange LLC Proposed Rules

## Rule 17.101. Preamble to the Listing Requirements for Other Securities

- (a) This section contains the requirements for listing other securities on TXSE.
- (b) The replacement of, or any significant modification to, the index, portfolio or Reference Asset underlying a security listed under Chapter 17 (including, but not limited to, a significant modification to the index methodology, a change in the index provider or a change in control of the index provider) is considered a Substitution Listing Event. The Company must notify TXSE at least fifteen calendar days in advance of the effective date of any Substitution Listing Event. Companies should note that these types of changes may affect the Company's compliance with the listing requirements and may require TXSE to file a new rule filing pursuant to Section 19(b)(1) of the Act and for such rule filing to be approved by the Commission or otherwise take effect (as applicable), before the product subject to the Substitution Listing Event can be listed or traded.

TXSE has sole discretion as to whether it chooses to submit a rule filing designed to permit the continued listing of the security and, if submitted, whether to withdraw such rule filing. As such, Companies are encouraged to consult with Staff sufficiently in advance of such changes to allow review and preparation of a rule filing and Commission approval, if necessary.

- (c) If a Company effectuates any change, including a Substitution Listing Event, which requires the filing of a proposed rule change pursuant to Section 19(b)(1) of the Act and such rule filing has not yet been approved by the Commission or has not yet taken effect (as applicable), then TXSE will immediately halt trading in the applicable security until such rule filing is approved or takes effect. If a rule filing is required but TXSE determines not to submit one or withdraws the rule filing after it is submitted, or the Commission disapproves the rule filing, TXSE will immediately commence delisting procedures with respect to such security.
- (d) A Company with securities listed under Chapter 17 must provide TXSE with prompt notification after the Company becomes aware of any noncompliance by the Company with the requirements of Chapter 17.
- (e) The requirements of TXSE Rule 16.409 (Recovery of Erroneously Awarded Compensation) apply to any security listed under Chapter 17 of the TXSE Rules, except for:
  - (1) Any security issued by a unit investment trust, as defined in 15 U.S.C. 80a-4(2);

- (2) Any security issued by a management company, as defined in 15 U.S.C. 80a-4(3), that is registered under Section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), if such management company has not awarded incentive-based compensation to any executive officer (as defined in Rule 10D-1 of the Act) of the company in any of the last three (3) fiscal years, or in the case of a company that has been listed for less than three (3) fiscal years, since the listing of the company.

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#### Rule 17.104. Exchange Traded Fund Shares

##### (a) Exchange Traded Fund Shares

- (1) Definitions. For the purpose of this TXSE Rule 17.104, the following terms shall have the meaning herein specified:
  - (A) Exchange Traded Funds. The term "Exchange Traded Fund" has the same meaning as the term "exchange-traded fund" has in Rule 6c-11 under the Investment Company Act of 1940.
  - (B) Exchange Traded Fund Share. The term "Exchange Traded Fund Share" has the same meaning as it has in Rule 6c-11 under the Investment Company Act of 1940.
  - (C) Reporting Authority. The term "Reporting Authority" in respect of a particular series of Exchange Traded Fund Shares means TXSE, a wholly-owned subsidiary of TXSE, or an institution or reporting service designated by TXSE or its subsidiary as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of any securities required to be deposited in connection with issuance of Exchange Traded Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Exchange Traded Fund Shares, net asset value, and other information relating to the issuance, redemption or trading of Exchange Traded Fund Shares.

Nothing in this paragraph shall imply that an institution or reporting service that is the source for calculating and reporting information relating to Exchange Traded Fund Shares must be designated by TXSE; the term "Reporting Authority" shall not refer to an institution or reporting service not so designated.

- (b) TXSE may approve a series of Exchange Traded Fund Shares for listing and trading pursuant to Rule 19b-4(e) under the Exchange, provided each series of Exchange Traded Fund Shares is eligible to operate in reliance on Rule 6c-11 under the Investment Company Act of 1940 and must satisfy the requirements of this TXSE Rule 17.104 on an initial and continued listing basis.
- (1) Initial and Continued Listing. Each series of Exchange Traded Fund Shares must also satisfy the following criteria on an initial and continued listing (except for paragraph (A) below) basis:
- (A) Initial Shares Outstanding. For each series of Exchange Traded Fund Shares, TXSE will establish a minimum number of Exchange Traded Fund Shares required to be outstanding at the time of commencement of trading on TXSE.
- (B) Dissemination of Information. All requirements set forth in this paragraph must be satisfied on both an initial and continued listing basis.
- (i) If the investment adviser to an Exchange Traded Fund is affiliated with a broker-dealer, such investment adviser shall erect and maintain a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to the underlying portfolio. Personnel who make decisions on the Exchange Traded Fund’s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Exchange Traded Fund portfolio.
- (ii) The Reporting Authority that provides the Exchange Traded Fund’s portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material nonpublic information regarding the actual components of the portfolio.
- (iii) If the index underlying a series of Exchange Traded Fund Shares is maintained by a broker-dealer or fund adviser, the broker-dealer or fund adviser shall erect and maintain a “fire wall” around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third-party who is not a broker-dealer or fund adviser;
- (iv) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable index.

- (C) Regular Trading Hours will occur between 9:30 a.m. and 4:00 p.m. for each series of Exchange Traded Fund Shares. In addition, TXSE may designate a series of Exchange Traded Fund Shares for trading during a pre-market session beginning at 8:00 a.m. and/or a post-market session ending at 5:00 p.m.
  - (D) The minimum price variation for quoting and entry of orders in Exchange Traded Fund Shares is \$0.01.
- (2) Suspension of trading and removal. TXSE will consider the suspension of trading in, and will initiate delisting proceedings under the TXSE Rule Series 16.500 of, a series of Exchange Traded Fund Shares under any of the following circumstances:
- (A) if TXSE becomes aware that the series of Exchange Traded Fund Shares is no longer eligible to operate in reliance on Rule 6c-11 under the Investment Company Act of 1940;
  - (B) if, following the initial twelve-month period after commencement of trading on TXSE of a series of Exchange Traded Fund Shares, there are fewer than 50 beneficial holders of such series of Exchange Traded Fund Shares;
  - (C) if any of the other requirements set forth in this TXSE Rule 17.104 are not continuously maintained; or
  - (D) if such other event shall occur or condition exists which in the opinion of TXSE, makes further dealings on TXSE inadvisable.
- (c) Surveillance Procedures. TXSE will implement and maintain written surveillance procedures for Exchange Traded Fund Shares.
- (d) Termination. Upon termination of an Exchange Traded Fund, TXSE requires that each series of Exchange Traded Fund Shares issued in connection with such entity be removed from listing.
- (e) Neither TXSE, the Reporting Authority, nor any agent of TXSE shall have any liability for damages, claims, losses or expenses caused by any errors, omissions or delays in calculating or disseminating any current index or portfolio value, the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of a series of Exchange Traded Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of a series of Exchange Traded Fund Shares; net asset value; or other information relating to the purchase, redemption or trading of a series of Exchange Traded Fund Shares, resulting from any negligent act or omission by TXSE, the Reporting Authority, or any agent of TXSE, or any act, condition or cause beyond the reasonable control of TXSE, its agent, or the Reporting Authority, including, but not limited to,

an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in one or more underlying securities.

- (f) A security that has previously been approved for listing on the Exchange pursuant to the generic listing requirements specified in TXSE Rule 17.105(b) or 17.135(b)(1), or pursuant to an approval of a proposed rule change or subject to a notice of effectiveness by the Commission, may be considered for listing solely under this TXSE Rule 17.104 if such security is eligible to operate in reliance on Rule 6c-11 under the Investment Company Act of 1940. At the time of listing of such security under this TXSE Rule 17.104, the continued listing requirements applicable to such security will be those specified in paragraph (b) of this TXSE Rule 17.104. Any requirements for listing as specified in TXSE Rule 17.105(b) or 17.135(b)(1), or an approval order or notice of effectiveness of a separate proposed rule change, that differ from the requirements of this TXSE Rule 17.104 will no longer be applicable to such security.

**Proposed:** July 31, 2025 (Release No. 34-103604; File No. 10-249).

**B. Generic Listing Standards for Non-Transparent Actively Managed ETFs**

Each exchange has adopted rules to accommodate non-transparent actively managed ETFs that utilize either a proxy portfolio/tracking basket methodology or a verified intraday indicative value (commonly known as ActiveShares). In this Handbook each exchange's proxy portfolio/tracking basket rule precedes its ActiveShares rule, which may not be the same order in which such rules appear in the relevant exchanges' rules books. This order has been used here to provide consistency in presentation for our readers, who may wish to compare one exchange's rules to another's.

**1. Cboe BZX Exchange, Inc.****Rule 14.11(m) Tracking Fund Shares**

- (1) The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Tracking Fund Shares that meet the criteria of this Rule.
- (2) Applicability. This Rule is applicable only to Tracking Fund Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on the Exchange of such securities. Tracking Fund Shares are included within the definition of "security" or "securities" as such terms are used in the Rules of the Exchange.
  - (A) The Exchange will file separate proposals under Section 19(b) of the Act before the listing and trading of a series of Tracking Fund Shares.
  - (B) Transactions in Tracking Fund Shares will occur throughout the Exchange's trading hours.
  - (C) Surveillance Procedures. The Exchange will implement and maintain written surveillance procedures for Tracking Fund 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 Fund Portfolio of each series of Tracking Fund Shares.
  - (D) If the investment adviser to the Investment Company issuing Tracking Fund 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 of and/or changes to the Fund Portfolio, the Tracking Basket, and/or the Custom Basket, as applicable. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the

Investment Company's Fund Portfolio, the Tracking Basket, and/or the Custom Basket or has access to nonpublic information regarding the Fund Portfolio, the Tracking Basket, and/or the Custom Basket, as applicable, or changes thereto must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund Portfolio, the Tracking Basket, and/or the Custom Basket, as applicable, or changes thereto.

- (E) Any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio, the Tracking Basket, or the Custom Basket, as applicable, or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio, the Tracking Basket, or the 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 Fund Portfolio, Tracking Basket, or Custom Basket, as applicable.
- (3) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:
- (A) Tracking Fund Share. The term "Tracking Fund Share" means a security that: (i) represents an interest in 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; (ii) is issued in a specified aggregate minimum number in return for a deposit of a specified Tracking Basket or Custom Basket, as applicable, and/or a cash amount with a value equal to the next determined net asset value; (iii) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified Tracking Basket or Custom Basket, as applicable, and/or a cash amount with a value equal to the next determined net asset value; and (iv) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.
  - (B) Fund Portfolio. The term "Fund Portfolio" means the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of net asset value at the end of the business day.

- (C) Reporting Authority. The term “Reporting Authority” in respect of a particular series of Tracking Fund Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Tracking Fund Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, the Tracking Basket; the Fund Portfolio; the Custom Basket; the amount of any cash distribution to holders of Tracking Fund Shares, net asset value, or other information relating to the issuance, redemption or trading of Tracking Fund Shares. A series of Tracking Fund Shares may have more than one Reporting Authority, each having different functions.
- (D) Normal Market Conditions. 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.
- (E) Tracking Basket. The term “Tracking Basket” means the identities and quantities of the securities and other assets included in a basket that is designed to closely track the daily performance of the Fund Portfolio, as provided in the exemptive relief under the Investment Company Act of 1940 applicable to a series of Tracking Fund Shares. The website for each series of Tracking Fund Shares shall disclose the following information regarding the Tracking Basket as required under this Rule 14.11(m), 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 weight of the holding in the portfolio.
- (F) Custom Basket. For purposes of this Rule, the term “Custom Basket” means a portfolio of securities that is different from the Tracking Basket and is otherwise consistent with the exemptive relief issued pursuant to the Investment Company Act of 1940 applicable to a series of Tracking Fund Shares.

- (4) Initial and Continued Listing. Tracking Fund Shares will be listed and traded on the Exchange subject to application of the following criteria:
- (A) Initial Listing. Each series of Tracking Fund Shares will be listed and traded on the Exchange subject to application of the following initial listing criteria:
- (i) For each series, the Exchange will establish a minimum number of Tracking Fund Shares required to be outstanding at the time of commencement of trading on the Exchange.
  - (ii) The Exchange will obtain a representation from the issuer of each series of Tracking Fund Shares that (a) the net asset value per share for the series will be calculated daily, (b) each of the following will be made available to all market participants at the same time when disclosed: the net asset value, the Tracking Basket, and the Fund Portfolio, and (c) the issuer and any person acting on behalf of the series of Tracking Fund Shares will comply with Regulation Fair Disclosure under the Securities Exchange Act of 1934, including with respect to any Custom Basket.
  - (iii) All Tracking Fund Shares shall have a stated investment objective, which shall be adhered to under Normal Market Conditions.
- (B) Continued Listing. Each series of Tracking Fund Shares will be listed and traded on the Exchange subject to application of the following continued listing criteria:
- (i) Tracking Basket. The Tracking Basket will be publicly disseminated at least once daily and will be made available to all market participants at the same time.
  - (ii) Custom Basket. With respect to each Custom Basket utilized by a series of Tracking Fund Shares, each business day, before the opening of trading in Regular Trading Hours (as defined in Rule 1.5(w)), 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 from the applicable Tracking Basket only with respect to cash.
  - (iii) Fund Portfolio. The Fund Portfolio will at a minimum be publicly disclosed within at least 60 days following the end of every fiscal quarter and will be made available to all market participants at the same time.

- (iv) Suspension of trading or removal. The Exchange will consider the suspension of trading in and will commence delisting proceedings for a series of Tracking Fund Shares pursuant to Rule 14.12 under any of the following circumstances:
  - (a) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Tracking Fund Shares, there are fewer than 50 beneficial holders of the series of Tracking Fund Shares for 30 or more consecutive trading days;
  - (b) if either the Tracking Basket or Fund Portfolio is not made available to all market participants at the same time;
  - (c) if the Investment Company issuing the Tracking Fund Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission or the Commission staff under the Investment Company Act of 1940 to the Investment Company with respect to the series of Tracking Fund Shares;
  - (d) if any of the requirements set forth in this rule are not continuously maintained;
  - (e) if any of the applicable Continued Listing Representations for the issue of Tracking Fund Shares are not continuously met; or
  - (f) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.
- (v) Trading Halt.
  - (a) The Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Tracking Fund 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 Tracking Fund Shares inadvisable. These may include: (i) the extent to which trading is not occurring in the securities and/or the financial instruments composing the Tracking Basket or Fund Portfolio; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

- (b) If the Exchange becomes aware that one of the following is not being made available to all market participants at the same time: the net asset value, the Tracking Basket, or the Fund Portfolio with respect to a series of Tracking Fund Shares, then the Exchange will halt trading in such series until such time as the net asset value, the Tracking Basket, or the Fund Portfolio is available to all market participants, as applicable.
  - (vi) Termination. Upon termination of an Investment Company, the Exchange requires that Tracking Fund Shares issued in connection with such entity be removed from listing on the Exchange.
  - (vii) Voting. Voting rights shall be as set forth in the applicable Investment Company prospectus and/or statement of additional information.
- (5) Limitation of Liability. Neither the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Tracking Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Tracking Fund Shares; net asset value; or other information relating to the purchase, redemption, or trading of Tracking Fund Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority when the Exchange is acting in the capacity of a Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

Rule 14.11(k) Managed Portfolio Shares

- (1) The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Managed Portfolio Shares that meet the criteria of this Rule.
- (2) Applicability. This Rule is applicable only to Managed Portfolio Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the rules and procedures of the Board of Directors

shall be applicable to the trading on the Exchange of such securities. Managed Portfolio Shares are included within the definition of “security” or “securities” as such terms are used in the Rules of the Exchange.

- (A) The Exchange will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before the listing and trading of a series of Managed Portfolio Shares.
- (B) Transactions in Managed Portfolio Shares will occur throughout the Exchange’s trading hours.
- (C) Surveillance Procedures. The Exchange will implement and maintain written surveillance procedures for Managed 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 Managed Portfolio Shares.
- (D) If the investment adviser to the Investment Company issuing Managed 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 of and/or changes to such Investment Company portfolio and/or the Creation Basket. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company’s portfolio composition or has access to information regarding the Investment Company’s portfolio composition or changes thereto or the Creation Basket must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket.
- (E) Any person or entity, including an AP Representative, custodian, Reporting Authority, distributor, or administrator, who has access to information regarding the Investment Company’s portfolio composition or changes thereto or the Creation Basket, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. 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 portfolio or Creation Basket.

- (3) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:
- (A) Managed Portfolio Share. The term “Managed Portfolio Share” means a security that (a) represents an interest in 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 Creation Unit, or multiples thereof, in return for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value and delivered to the Authorized Participant (as defined in the Investment Company’s Form N-1A filed with the Commission) through a Confidential Account; (c) when aggregated into a Redemption Unit, or multiples thereof, may be redeemed for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value delivered to the Confidential Account for the benefit of the Authorized Participant; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.
  - (B) Verified Intraday Indicative Value. The term “Verified Intraday Indicative Value” is the indicative value of a Managed Portfolio Share based on all of the holdings of a series of Managed Portfolio Shares as of the close of business on the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, priced and disseminated in one second intervals during Regular Trading Hours by the Reporting Authority.
  - (C) AP Representative. The term “AP Representative” means an unaffiliated broker-dealer, with which an Authorized Participant has signed an agreement to establish a Confidential Account for the benefit of such Authorized Participant, that will deliver or receive, on behalf of the Authorized Participant, all consideration to or from the Investment Company in a creation or redemption. An AP Representative will not be permitted to disclose the Creation Basket to any person, including the Authorized Participants.
  - (D) Confidential Account. The term “Confidential Account” means an account owned by an Authorized Participant and held with an AP Representative on behalf of the Authorized Participant. The account will be established and governed by contractual agreement between the AP Representative and the Authorized Participant solely for the purposes of creation and redemption, while keeping confidential the

Creation Basket constituents of each series of Managed Portfolio Shares, including from the Authorized Participant. The books and records of the Confidential Account will be maintained by the AP Representative on behalf of the Authorized Participant.

- (E) Creation Basket. The term “Creation Basket” means on any given business day the names and quantities of the specified instruments (and/or an amount of cash) that are required for an AP Representative to deposit in-kind on behalf of an Authorized Participant in exchange for a Creation Unit and the names and quantities of the specified instruments (and/or an amount of cash) that will be transferred in-kind to an AP Representative on behalf of an Authorized Participant in exchange for a Redemption Unit, which will be identical and will be transmitted to each AP Representative before the commencement of trading.
- (F) Creation Unit. The term “Creation Unit” means a specified minimum number of Managed Portfolio Shares issued by an Investment Company at the request of an Authorized Participant in return for a designated portfolio of instruments and/or cash.
- (G) Redemption Unit. The term “Redemption Unit” means a specified minimum number of Managed Portfolio Shares that may be redeemed to an Investment Company at the request of an Authorized Participant in return for a portfolio of instruments and/or cash.
- (H) Reporting Authority. The term “Reporting Authority” in respect of a particular series of Managed Portfolio Shares means the Exchange, the exchange that lists a particular series of Managed Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges), an institution, or a reporting service designated by the Investment Company as the official source for calculating and reporting information relating to such series, including, the net asset value, the Verified Intraday Indicative Value, or other information relating to the issuance, redemption or trading of Managed Portfolio Shares. A series of Managed Portfolio Shares may have more than one Reporting Authority, each having different functions.
- (I) Normal Market Conditions. 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.

- (4) Initial and Continued Listing. Managed Portfolio Shares will be listed and traded on the Exchange subject to application of the following criteria:
- (A) Initial Listing. Each series of Managed Portfolio Shares will be listed and traded on the Exchange subject to application of the following initial listing criteria:
- (i) For each series, the Exchange will establish a minimum number of Managed Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange.
  - (ii) The Exchange will obtain a representation from the Investment Company that issues each series of Managed Portfolio Shares that the net asset value per share for the series will be calculated daily and that the net asset value will be made available to all market participants at the same time.
  - (iii) All Managed Portfolio Shares shall have a stated investment objective, which shall be adhered to under Normal Market Conditions.
- (B) Continued Listing. Each series of Managed Portfolio Shares will be listed and traded on the Exchange subject to application of the following continued listing criteria:
- (i) Verified Intraday Indicative Value. The Verified Intraday Indicative Value for Managed Portfolio Shares will be widely disseminated by the Reporting Authority and/or by one or more major market data vendors in one second intervals during Regular Trading Hours, and will be disseminated to all market participants at the same time.
  - (ii) Suspension of trading or removal. The Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 14.12 for, a series of Managed Portfolio Shares under any of the following circumstances:
    - (a) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Portfolio Shares, there are fewer than 50 beneficial holders of the series of Managed Portfolio Shares for 30 or more consecutive trading days;
    - (b) if the Exchange has halted trading in a series of Managed Portfolio Shares because the Verified Intraday Indicative Value is interrupted pursuant to Rule 14.11(k)(4)(B)(iii)(b) and such interruption persists past the trading day in which it occurred or is no longer available;

- (c) if the Exchange has halted trading in a series of Managed Portfolio Shares because the net asset value with respect to such series of Managed Portfolio Shares is not disseminated to all market participants at the same time, the holdings of such series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act, or such holdings are not made available to all market participants at the same time pursuant to Rule 14.11(k)(4)(B)(iii)(b) and such issue persists past the trading day in which it occurred;
  - (d) if the Exchange has halted trading in a series of Managed Portfolio Shares pursuant to Rule 14.11(k)(4)(B)(iii)(a), such issue persists past the trading day in which it occurred;
  - (e) if the Investment Company issuing the Managed Portfolio Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares;
  - (f) if any of the continued listing requirements set forth in Rule 14.11(k) are not continuously maintained;
  - (g) if any of the applicable Continued Listing Representations for the issue of Managed Portfolio Shares are not continuously met; or
  - (h) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.
- (iii) Trading Halt.
- (a) The Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed 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 Managed Portfolio Shares inadvisable. These may include: (i) the extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

- (b) If the Exchange becomes aware that: (i) the Verified Intraday Indicative Value of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (ii) the net asset value with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (iii) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (iv) such holdings are not made available to all market participants at the same time (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares), it will halt trading in such series until such time as the Verified Intraday Indicative Value, the net asset value, or the holdings are available, as required.
  - (iv) Termination. Upon termination of an Investment Company, the Exchange requires that Managed Portfolio Shares issued in connection with such entity be removed from Exchange listing.
  - (v) Voting. Voting rights shall be as set forth in the applicable Investment Company prospectus and/or statement of additional information.
- (5) Limitation of Exchange Liability. Neither the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Managed Portfolio Shares; the Verified Intraday Indicative Value; the amount of any dividend equivalent payment or cash distribution to holders of Managed Portfolio Shares; net asset value; or other information relating to the purchase, redemption, or trading of Managed Portfolio Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority when the Exchange is acting in the capacity of a Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

- (6) Disclosures. The provisions of this subparagraph apply only to series of Managed Portfolio Shares that are the subject of an order by the Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 and are not otherwise subject to prospectus delivery requirements under the Securities Act of 1933.

The Exchange will inform its Members regarding application of this subparagraph to a particular series of Managed Portfolio Shares by means of an information circular prior to commencement of trading in such series. The Exchange requires that members provide to all purchasers of a series of Managed Portfolio Shares a written description of the terms and characteristics of those securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members shall include such a written description with any sales material relating to a series of Managed Portfolio Shares that is provided to customers or the public. Any other written materials provided by a member to customers or the public making specific reference to a series of Managed Portfolio Shares as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of (the series of Managed Portfolio Shares) has been prepared by the (open-end management investment company name) and is available from your broker. It is recommended that you obtain and review such circular before purchasing (the series of Managed Portfolio Shares)."

A member carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of Managed Portfolio Shares for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members under this rule.

Upon request of a customer, a member shall also provide a prospectus for the particular series of Managed Portfolio Shares.

## 2. Nasdaq Stock Market LLC

## Rule 5750. Proxy Portfolio Shares

- (a) The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Proxy Portfolio Shares that meet the criteria of this Rule.
- (b) Applicability. This Rule is applicable only to Proxy Portfolio Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on the Exchange of such securities. Proxy Portfolio Shares are included within the definition of “security” or “securities” as such terms are used in the Rules of the Exchange.
  - (1) The Exchange will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before the listing and trading of a series of Proxy Portfolio Shares.
  - (2) Transactions in Proxy Portfolio Shares will occur throughout the Exchange’s trading hours.
  - (3) Minimum Price Variance. The minimum price variation for quoting and entry of orders in Proxy Portfolio Shares is \$0.01.
  - (4) Surveillance Procedures. The Exchange will implement and maintain written surveillance procedures for 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 Fund Portfolio of each series of Proxy Portfolio Shares.
  - (5) If the investment adviser to the Investment Company issuing 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 of and/or changes to the Fund Portfolio, the Proxy Basket, 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 Fund Portfolio, the Proxy Basket, and/or Custom Basket, as applicable, or has access to nonpublic information regarding the Fund Portfolio, the Proxy Basket, and/or Custom Basket, as applicable, or changes thereto must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund Portfolio and/or the Proxy Basket, and/or Custom Basket, as applicable, or changes thereto.

- (6) Any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio, the Proxy Basket, or the Custom Basket, as applicable, or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio, the Proxy Basket, or the 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 Fund Portfolio, Proxy Basket, or the Custom Basket, as applicable.
- (c) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:
- (1) Proxy Portfolio Share. The term “Proxy Portfolio Share” means a security that: (A) represents an interest in 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 aggregate minimum number in return for a deposit of a specified Proxy Basket or Custom Basket, as applicable, and/or a cash amount with a value equal to the next determined net asset value; (C) when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid specified Proxy Basket or Custom Basket, as applicable, and/or a cash amount with a value equal to the next determined net asset value; and (D) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.
- (2) Fund Portfolio. The term “Fund Portfolio” means the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company’s calculation of net asset value at the end of the business day.
- (3) Reporting Authority. The term “Reporting Authority” in respect of a particular series of Proxy Portfolio Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Proxy Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, the Proxy Basket; the Fund Portfolio; Custom Basket; the amount of any cash distribution to holders of Proxy Portfolio Shares, net asset value, or other information relating to the issuance, redemption or trading of Proxy Portfolio Shares. A series of Proxy Portfolio Shares may have more than one Reporting Authority, each having different functions.

- (4) Normal Market Conditions. 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.
  - (5) Proxy Basket. The term “Proxy Basket” means the identities and quantities of the securities and other assets included in a basket that is designed to closely track the daily performance of the Fund Portfolio, as provided in the exemptive relief under the 1940 Act applicable to a series of Proxy Portfolio Shares. The website for each series of Proxy Portfolio Shares shall disclose the following information regarding the Proxy Basket as required under this Rule 5750, to the extent applicable:
    - (A) Ticker symbol;
    - (B) CUSIP or other identifier;
    - (C) Description of holding;
    - (D) Quantity of each security or other asset held; and
    - (E) Percentage weight of the holding in the portfolio.
  - (6) Custom Basket. For purposes of this rule, the term “Custom Basket” means a portfolio of securities that is different from the Proxy Basket and is otherwise consistent with the exemptive relief issued pursuant to the Investment Company Act of 1940 applicable to a series of Proxy Portfolio Shares.
- (d) Initial and Continued Listing. Proxy Portfolio Shares will be listed and traded on the Exchange subject to application of the following criteria:
- (1) Initial Listing. Each series of Proxy Portfolio Shares will be listed and traded on the Exchange subject to application of the following criteria:
    - (A) For each series, the Exchange will establish a minimum number of Proxy Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange.
    - (B) The Exchange will obtain a representation from the issuer of each series of Proxy Portfolio Shares that (i) the net asset value per share for the series will be calculated daily, (ii) each of the following will be made available to all market participants at the same time when disclosed: the net asset value, the Proxy Basket, and the Fund Portfolio, and (iii) the issuer and any person acting on behalf of the series of Proxy Portfolio Shares will comply with Regulation Fair Disclosure under the Securities Exchange Act of 1934, including with respect to any Custom Basket.

- (C) All Proxy Portfolio Shares shall have a stated investment objective, which shall be adhered to under Normal Market Conditions.
- (2) Continued Listing. Each series of Proxy Portfolio Shares will be listed and traded on the Exchange subject to application of the following continued listing criteria:
  - (A) Proxy Basket and Custom Basket. (i) The Proxy Basket will be publicly disseminated at least once daily and will be made available to all market participants at the same time. (ii) With respect to each Custom Basket utilized by a series of Proxy Portfolio Shares, each business day, before the opening of trading in the regular market session, 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 from the applicable Proxy Basket only with respect to cash.
  - (B) Fund Portfolio. The Fund Portfolio will at a minimum be publicly disclosed within at least 60 days following the end of every fiscal quarter and will be made available to all market participants at the same time.
  - (C) Suspension of trading or removal. The Exchange will consider the suspension of trading in and will commence delisting proceedings for a series of Proxy Portfolio Shares pursuant to Rule 5800 under any of the following circumstances:
    - (i) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Proxy Portfolio Shares, there are fewer than 50 beneficial holders of the series of Proxy Portfolio Shares;
    - (ii) if either the Proxy Basket or Fund Portfolio is not made available to all market participants at the same time;
    - (iii) if the Investment Company issuing the Proxy Portfolio Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission or the Commission staff under the 1940 Act to the Investment Company with respect to the series of Proxy Portfolio Shares;
    - (iv) if any of the requirements set forth in this rule are not continuously maintained;
    - (v) if any of the applicable Continued Listing Representations for the issue of Proxy Portfolio Shares are not continuously met; or

- (vi) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.
- (D) Trading Halt.
  - (i) The Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of 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 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 Basket or Fund Portfolio; or
    - b. whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.
  - (ii) If the Exchange becomes aware that one of the following is not being made available to all market participants at the same time: the net asset value, the Proxy Basket, or the Fund Portfolio with respect to a series of Proxy Portfolio Shares, then the Exchange will halt trading in such series until such time as the net asset value, the Proxy Basket, or the Fund Portfolio is available to all market participants, as applicable.
- (E) Termination. Upon termination of an Investment Company, the Exchange requires that Proxy Portfolio Shares issued in connection with such entity be removed from listing on the Exchange.
- (F) Voting. Voting rights shall be as set forth in the applicable Investment Company prospectus and/or statement of additional information.
- (e) Limitation of Exchange Liability. Neither the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the open- end management investment company in connection with issuance of Proxy Portfolio Shares; the amount of any dividend equivalent payment or cash distribution to holders of Proxy Portfolio Shares; net asset value; or other information relating to the purchase, redemption, or trading of Proxy Portfolio Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority when the Exchange is acting in the capacity of a Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, including, but not limited to, an act of God;

fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

#### Rule 5760. Managed Portfolio Shares

- (a) The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Managed Portfolio Shares that meet the criteria of this Rule.
- (b) Applicability. This Rule is applicable only to Managed Portfolio Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on the Exchange of such securities. Managed Portfolio Shares are included within the definition of "security" or "securities" as such terms are used in the Rules of the Exchange.
  - (1) Nasdaq will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before the listing and trading of a series of Managed Portfolio Shares. All statements or representations contained in such rule filing regarding (a) the description of the portfolio or reference assets; (b) limitations on portfolio holdings or reference assets; (c) dissemination and availability of the reference asset or intraday indicative values and Verified Intraday Indicative Values (as applicable); or (d) the applicability of Nasdaq listing rules specified in such proposals shall constitute continued listing standards.
  - (2) Transactions in Managed Portfolio Shares will occur throughout the Exchange's System Hours.
  - (3) Minimum Price Variance. The minimum price variation for quoting and entry of orders in Managed Portfolio Shares is \$0.01.
  - (4) Surveillance Procedures. The Exchange will implement and maintain written surveillance procedures for Managed 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 Managed Portfolio Shares.
  - (5) If the investment adviser to the Investment Company issuing Managed 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 of and/or changes to such Investment Company portfolio and/or the Creation Basket. Any person related to the investment adviser or Investment Company who makes decisions

pertaining to the Investment Company's portfolio composition or has access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket.

- (6) Any person or entity, including an AP Representative, custodian, Reporting Authority, distributor, or administrator, who has access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. 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 portfolio or Creation Basket.
- (c) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:
  - (1) Managed Portfolio Share. The term "Managed Portfolio Share" means a security that (a) represents an interest in 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 Creation Unit, or multiples thereof, in return for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value and delivered to the Authorized Participant (as defined in the Investment Company's Form N-1A filed with the SEC) through a Confidential Account; (c) when aggregated into a Redemption Unit, or multiples thereof, may be redeemed for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value delivered to the Confidential Account for the benefit of the Authorized Participant; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.
  - (2) Verified Intraday Indicative Value. The term "Verified Intraday Indicative Value" is the indicative value of a Managed Portfolio Share based on all of the holdings of a series of Managed Portfolio Shares as of the close of business on the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, priced and disseminated in one second intervals during Nasdaq's regular market session by the Reporting Authority.

- (3) AP Representative. The term “AP Representative” means an unaffiliated broker-dealer, with which an Authorized Participant has signed an agreement to establish a Confidential Account for the benefit of such Authorized Participant, that will deliver or receive, on behalf of the Authorized Participant, all consideration to or from the Investment Company in a creation or redemption. An AP Representative will not be permitted to disclose the Creation Basket to any person, including the Authorized Participants.
- (4) Confidential Account. The term “Confidential Account” means an account owned by an Authorized Participant and held with an AP Representative on behalf of the Authorized Participant. The account will be established and governed by contractual agreement between the AP Representative and the Authorized Participant solely for the purposes of creation and redemption, while keeping confidential the Creation Basket constituents of each series of Managed Portfolio Shares, including from the Authorized Participant. The books and records of the Confidential Account will be maintained by the AP Representative on behalf of the Authorized Participant.
- (5) Creation Basket. The term “Creation Basket” means on any given business day the names and quantities of the specified instruments and/or an amount of cash that are required for an AP Representative to deposit in-kind on behalf of an Authorized Participant in exchange for a Creation Unit and the names and quantities of the specified instruments and/or an amount of cash that will be transferred in-kind to an AP Representative on behalf of an Authorized Participant in exchange for a Redemption Unit, which will be identical and will be transmitted to each AP Representative before the commencement of trading.
- (6) Creation Unit. The term “Creation Unit” means a specified minimum number of Managed Portfolio Shares issued by an Investment Company at the request of an Authorized Participant in return for a designated portfolio of instruments and/or cash.
- (7) Redemption Unit. The term “Redemption Unit” means a specified minimum number of Managed Portfolio Shares that may be redeemed to an Investment Company at the request of an Authorized Participant in return for a portfolio of instruments and/or cash.
- (8) Reporting Authority. The term “Reporting Authority” in respect of a particular series of Managed Portfolio Shares means the Exchange, the exchange that lists a particular series of Managed Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges), an institution, or a reporting service designated by the Investment Company as the official source for calculating and reporting information relating to such series, including, the net asset value, the Verified Intraday Indicative Value, or other information relating to the issuance, redemption or trading of Managed Portfolio Shares. A series of Managed Portfolio Shares may have more than one Reporting Authority, each having different functions.

- (9) Normal Market Conditions. 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.
- (d) Initial and Continued Listing. Managed Portfolio Shares will be listed and traded on the Exchange subject to application of the following criteria:
  - (1) Initial Listing. Each series of Managed Portfolio Shares will be listed and traded on the Exchange subject to application of the following initial listing criteria:
    - (A) For each series, the Exchange will establish a minimum number of Managed Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange.
    - (B) The Exchange will obtain a representation from the Investment Company that issues each series of Managed Portfolio Shares that the net asset value per share for the series will be calculated daily and that the net asset value will be made available to all market participants at the same time.
    - (C) All Managed Portfolio Shares shall have a stated investment objective, which shall be adhered to under Normal Market Conditions.
  - (2) Continued Listing. Each series of Managed Portfolio Shares will be listed and traded on the Exchange subject to application of the following continued listing criteria:
    - (A) Verified Intraday Indicative Value. The Verified Intraday Indicative Value for Managed Portfolio Shares will be widely disseminated by the Reporting Authority and/or by one or more major market data vendors in one second intervals during Nasdaq’s regular market session, and will be disseminated to all market participants at the same time.
    - (B) Suspension of trading or removal. The Exchange will consider the suspension of trading in, and will commence delisting proceedings under the Rule 5800 Series, for a series of Managed Portfolio Shares, under any of the following circumstances:
      - (i) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Portfolio Shares, there are fewer than 50 beneficial holders of the series of Managed Portfolio Shares for 30 or more consecutive trading days;

- (ii) if the Exchange has halted trading in a series of Managed Portfolio Shares because the Verified Intraday Indicative Value is interrupted pursuant to Nasdaq Rule 5760(d)(2)(C)(ii) and such interruption persists past the trading day in which it occurred or is no longer available;
- (iii) if the Exchange has halted trading in a series of Managed Portfolio Shares because the net asset value with respect to such series of Managed Portfolio Shares is not disseminated to all market participants at the same time, the holdings of such series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act, or such holdings are not made available to all market participants at the same time pursuant to Nasdaq Rule 5760(d)(2)(C)(ii) and such issue persists past the trading day in which it occurred;
- (iv) if the Exchange has halted trading in a series of Managed Portfolio Shares pursuant to Nasdaq Rule 5760(d)(2)(C)(i), such issue persists past the trading day in which it occurred;
- (v) if the Investment Company issuing the Managed Portfolio Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares;
- (vi) if any of the continued listing requirements set forth in Nasdaq Rule 5760 are not continuously maintained;
- (vii) if the series of Managed Portfolio Shares is not in compliance with any statements or representations included in the applicable rule proposal under Section 19(b) regarding: (a) the description of the portfolio or reference assets; (b) limitations on portfolio holdings or reference assets; (c) dissemination and availability of the reference asset or intraday indicative values and Verified Intraday Indicative Values; or (d) the applicability of Nasdaq listing rules specified in such proposals; or
- (viii) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

(C) Trading Halt.

- (i) The Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed 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 Managed 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 portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

- (ii) If the Exchange becomes aware that: (a) the Verified Intraday Indicative Value of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (b) the net asset value with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (c) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (d) such holdings are not made available to all market participants at the same time (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares), it will halt trading in such series until such time as the Verified Intraday Indicative Value, the net asset value, or the holdings are available, as required.

(D) Termination. Upon termination of an Investment Company, the Exchange requires that Managed Portfolio Shares issued in connection with such entity be removed from Exchange listing.

(E) Voting. Voting rights shall be as set forth in the applicable Investment Company prospectus and/or statement of additional information.

- (e) Limitation of Exchange Liability. Neither the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Managed Portfolio Shares; the Verified Intraday Indicative Value; the amount of any dividend equivalent payment or cash distribution to holders of Managed Portfolio Shares; net asset value; or other information relating to the purchase, redemption, or trading of Managed Portfolio Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority when the Exchange is acting in the capacity of a Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, including, but not limited to, an act of God; fire; flood;

extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

- (f) Disclosures. The provisions of this subparagraph apply only to series of Managed Portfolio Shares that are the subject of an order by the Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 and are not otherwise subject to prospectus delivery requirements under the Securities Act of 1933. The Exchange will inform its Members regarding application of this subparagraph to a particular series of Managed Portfolio Shares by means of an information circular prior to commencement of trading in such series.

The Exchange requires that Members provide to all purchasers of a series of Managed Portfolio Shares a written description of the terms and characteristics of those securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, Members shall include such a written description with any sales material relating to a series of Managed Portfolio Shares that is provided to customers or the public. Any other written materials provided by a Member to customers or the public making specific reference to a series of Managed Portfolio Shares as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of (the series of Managed Portfolio Shares) has been prepared by the (open-end management investment company name) and is available from your broker. It is recommended that you obtain and review such circular before purchasing (the series of Managed Portfolio Shares)."

A Member carrying an omnibus account for a non-Member broker-dealer is required to inform such non-Member that execution of an order to purchase a series of Managed Portfolio Shares for such omnibus account will be deemed to constitute agreement by the non-Member to make such written description available to its customers on the same terms as are directly applicable to Members under this rule.

Upon request of a customer, a Member shall also provide a prospectus for the particular series of Managed Portfolio Shares.

## 3. NYSE Arca, Inc.

## Rule 8.601-E. Active Proxy Portfolio Shares

- (a) The Exchange shall consider for trading, whether by listing or pursuant to unlisted trading privileges, Active Proxy Portfolio Shares that meet the criteria of this Rule.
- (b) Applicability. This Rule is applicable only to Active Proxy Portfolio Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on the Exchange of such securities. Active Proxy Portfolio Shares are included within the definition of “security” or “securities” as such terms are used in the Rules of the Exchange.
- (c) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:
  - 1. Active Proxy Portfolio Shares. The term “Active Proxy Portfolio Share” means a security that (a) is issued by a investment company registered under the Investment Company Act of 1940 (“Investment Company”) organized as an 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.
  - 2. Actual Portfolio. The 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.
  - 3. Proxy Portfolio. The term “Proxy Portfolio” means a specified portfolio of securities, other financial instruments and/or cash designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series. The website for each series of Active Proxy Portfolio Shares shall disclose the

information regarding the Proxy Portfolio as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series, including the following, to the extent applicable:

- i. Ticker symbol;
  - ii. CUSIP or other identifier;
  - iii. Description of holding;
  - iv. Quantity of each security or other asset held; and
  - v. Percentage weighting of the holding in the portfolio.
4. Custom Basket. For purposes of this rule, 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. Reporting Authority. The term “Reporting Authority” in respect of a particular series of Active Proxy Portfolio Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Active Proxy Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, NAV, the Actual Portfolio, Proxy Portfolio, Custom Basket, or other information relating to the issuance, redemption or trading of Active Proxy Portfolio Shares. A series of Active Proxy Portfolio Shares may have more than one Reporting Authority, each having different functions.
  6. Normal Market Conditions. 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.
- (d) Initial and Continued Listing. Active Proxy Portfolio Shares shall be listed and traded on the Exchange subject to application of the following criteria:
1. Initial Listing. Each series of Active Proxy Portfolio Shares shall be listed and traded on the Exchange subject to application of the following initial listing criteria:
    - A. For each series, the Exchange shall establish a minimum number of Active Proxy Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange.

- B. The Exchange shall obtain a representation from the issuer of each series of Active Proxy Portfolio Shares that (i) the NAV per share for the series shall be calculated daily, (ii) the NAV, the Proxy Portfolio, and the Actual Portfolio shall be made publicly available to all market participants at the same time, and (iii) the issuer and any person acting on behalf of the series of Active Proxy Portfolio Shares will comply with Regulation Fair Disclosure under the Securities Exchange Act of 1934, including with respect to any Custom Basket.
  - C. All Active Proxy Portfolio Shares shall have a stated investment objective, which shall be adhered to under normal market conditions.
2. Continued Listing. Each series of Active Proxy Portfolio Shares shall be listed and traded on the Exchange subject to application of the following continued listing criteria:
- A. Actual Portfolio.
    - i. The Actual Portfolio shall be publicly disseminated within at least 60 days following the end of every fiscal quarter and shall be made publicly available to all market participants at the same time.
  - B. Proxy Portfolio and Custom Basket.
    - i. The Proxy Portfolio shall be made publicly available on the website for each series of Active Proxy Portfolio Shares at least once daily and shall be made available to all market participants at the same time.
    - ii. With respect to each Custom Basket utilized by a series of Active Proxy Portfolio Shares, each business day, before the opening of trading in the Core Trading Session (as defined in 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 from the applicable Proxy Portfolio only with respect to cash.
  - C. Suspension of trading or removal. The Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 5.5-E(m) for, a series of Active Proxy Portfolio Shares under any of the following circumstances:
    - i. if any of the continued listing requirements set forth in Rule 8.601-E are not continuously maintained;
    - ii. if either the Proxy Portfolio or Actual Portfolio is not made available to all market participants at the same time;

- iii. if, following the initial twelve month period after commencement of trading on the Exchange of a series of Active Proxy Portfolio Shares, there are fewer than 50 beneficial holders of such series of Active Proxy Portfolio Shares;
  - iv. if the Exchange is notified, or otherwise becomes aware, that the Investment Company has failed to file any filings required by the Commission or is not in compliance with the conditions of any currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to a series of Active Proxy Portfolio Shares;
  - v. if any of the statements or representations regarding (a) the description of the portfolio, (b) limitations on portfolio holdings, or (c) the applicability of Exchange listing rules, specified in the Exchange's rule filing pursuant to Section 19(b) of the Securities Exchange Act of 1934 to permit the listing and trading of a series of Active Proxy Portfolio Shares, is not continuously maintained; or
  - vi. if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.
- D. Trading Halt.
- i. The Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Active Proxy Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Active Proxy Portfolio Shares inadvisable. These may include: (a) the extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Portfolio and/or Actual Portfolio, or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.
  - ii. If a series of Active Proxy Portfolio Shares is trading on the Exchange pursuant to unlisted trading privileges, the Exchange shall halt trading in that series as specified in Rule 7.18-E(d)(1).
  - iii. 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 made available 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, as applicable.

- E. Termination. Upon termination of an Investment Company, the Exchange requires that Active Proxy Portfolio Shares issued in connection with such entity be removed from Exchange listing.
  - F. Voting. Voting rights shall be as set forth in the applicable Investment Company prospectus.
- (e) Limitation of Exchange Liability. Neither the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the Investment Company in connection with issuance of Active Proxy Portfolio Shares; the amount of any dividend equivalent payment or cash distribution to holders of Active Proxy Portfolio Shares; NAV; or other information relating to the purchase, redemption, or trading of Active Proxy Portfolio Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

*Commentary:*

- .01 The Exchange will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before the listing and trading of a series of Active Proxy Portfolio Shares. All statements or representations contained in such rule filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements.
- .02 Transactions in Active Proxy Portfolio Shares shall occur during the trading hours specified in NYSE Arca Rule 7.34-E(a).
- .03 Surveillance Procedures. The Exchange will implement and maintain written surveillance procedures for Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will, upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily Actual Portfolio holdings of each series of Active Proxy Portfolio Shares.

- .04 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 Custom Basket, as applicable, or has access to non-public information regarding the Investment Company’s Actual Portfolio, the Proxy Portfolio, and/or the 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, the Proxy Portfolio, and/or the Custom Basket, as applicable, or changes thereto.
- .05 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, the Proxy Portfolio, or the 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, the Proxy Portfolio, or the 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.

#### Rule 8.900-E. Managed Portfolio Shares

- (a) The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Managed Portfolio Shares that meet the criteria of this Rule.
- (b) Applicability. This Rule is applicable only to Managed Portfolio Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on the Exchange of such securities. Managed Portfolio Shares are included within the definition of “security” or “securities” as such terms are used in the Rules of the Exchange.
- (1) The Exchange will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before the listing and trading of a series of Managed Portfolio Shares. All statements or representations contained in such rule filing regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the

applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements.

- (2) Transactions in Managed Portfolio Shares shall occur during the trading hours specified in NYSE Arca Rule 7.34-E(a).
  - (3) Surveillance Procedures. The Exchange will implement and maintain written surveillance procedures for Managed 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 Managed Portfolio Shares.
  - (4) If the investment adviser to the Investment Company issuing Managed 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 of and/or changes to such Investment Company portfolio and/or the Creation Basket. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's portfolio composition or has access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket.
  - (5) Any person or entity, including an AP Representative, custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket, must be subject to procedures reasonably designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. 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 portfolio or Creation Basket.
- (c) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:
- (1) Managed Portfolio Share. The term "Managed Portfolio Share" means a security that (a) represents an interest in 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 Creation Unit, or multiples thereof, in return for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value and delivered to the Authorized Participant (as defined in the Investment Company's Form N-1A filed with the Commission) through a Confidential Account; (c) when aggregated into a Redemption Unit, or multiples thereof, may be redeemed for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value delivered to the Confidential Account for the benefit of the Authorized Participant; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

- (2) **Verified Intraday Indicative Value.** The term "Verified Intraday Indicative Value" is the indicative value of a Managed Portfolio Share based on all of the holdings of a series of Managed Portfolio Shares as of the close of business on the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, priced and disseminated in one second intervals during the Core Trading Session by the Reporting Authority.
- (3) **AP Representative.** The term "AP Representative" means an unaffiliated broker-dealer, with which an Authorized Participant has signed an agreement to establish a Confidential Account for the benefit of such Authorized Participant, that will deliver or receive, on behalf of the Authorized Participant, all consideration to or from the Investment Company in a creation or redemption. An AP Representative will not be permitted to disclose the Creation Basket to any person, including the Authorized Participants.
- (4) **Confidential Account.** The term "Confidential Account" means an account owned by an Authorized Participant and held with an AP Representative on behalf of the Authorized Participant. The account will be established and governed by contractual agreement between the AP Representative and the Authorized Participant solely for the purposes of creation and redemption, while keeping confidential the Creation Basket constituents of each series of Managed Portfolio Shares, including from the Authorized Participant. The books and records of the Confidential Account will be maintained by the AP Representative on behalf of the Authorized Participant.
- (5) **Creation Basket.** The term "Creation Basket" means on any given business day the names and quantities of the specified instruments (and/or an amount of cash) that are required for an AP Representative to deposit in-kind on behalf of an Authorized Participant in exchange for a Creation Unit and the names and quantities of the specified instruments (and/or an amount of cash) that will be transferred in-kind to an AP Representative

on behalf of an Authorized Participant in exchange for a Redemption Unit, which will be identical and will be transmitted to each AP Representative before the commencement of trading.

- (6) **Creation Unit.** The term "Creation Unit" means a specified minimum number of Managed Portfolio Shares issued by an Investment Company at the request of an Authorized Participant in return for a designated portfolio of instruments and/or cash.
- (7) **Redemption Unit.** The term "Redemption Unit" means a specified minimum number of Managed Portfolio Shares that may be redeemed to an Investment Company at the request of an Authorized Participant in return for a portfolio of instruments and/or cash.
- (8) **Reporting Authority.** The term "Reporting Authority" in respect of a particular series of Managed Portfolio Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Managed Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges), as the official source for calculating and reporting information relating to such series, including, but not limited to, the net asset value, the Verified Intraday Indicative Value, or other information relating to the issuance, redemption or trading of Managed Portfolio Shares. A series of Managed Portfolio Shares may have more than one Reporting Authority, each having different functions.
- (9) **Normal Market Conditions.** The term "Normal Market Conditions" includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operations issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruptions or any similar intervening circumstance.
- (d) **Initial and Continued Listing.** Managed Portfolio Shares will be listed and traded on the Exchange subject to application of the following criteria:
  - (1) **Initial Listing.** Each series of Managed Portfolio Shares will be listed and traded on the Exchange subject to application of the following initial listing criteria:
    - (A) For each series, the Exchange will establish a minimum number of Managed Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange.
    - (B) The Exchange will obtain a representation from the Investment Company that issues each series of Managed Portfolio Shares that the net asset value per share for the series will be calculated daily and that the net asset value will be made available to all market participants at the same time.

- (C) All Managed Portfolio Shares shall have a stated investment objective, which shall be adhered to under Normal Market Conditions.
- (2) Continued Listing. Each series of Managed Portfolio Shares will be listed and traded on the Exchange subject to application of the following continued listing criteria:
  - (A) Verified Intraday Indicative Value. The Verified Intraday Indicative Value for Managed Portfolio Shares will be widely disseminated by the Reporting Authority and/or by one or more major market data vendors in one second intervals during the Core Trading Session, and will be disseminated to all market participants at the same time.
  - (B) Suspension of trading or removal. The Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 5.5-E(m) for, a series of Managed Portfolio Shares under any of the following circumstances:
    - (i) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Portfolio Shares, there are fewer than 50 beneficial holders of the series of Managed Portfolio Shares;
    - (ii) if the Exchange has halted trading in a series of Managed Portfolio Shares because the Verified Intraday Indicative Value is interrupted pursuant to Rule 8.900-E(d)(2)(C)(ii) and such interruption persists past the trading day in which it occurred or is no longer available;
    - (iii) if the Exchange has halted trading in a series of Managed Portfolio Shares because the net asset value with respect to such series of Managed Portfolio Shares is not disseminated to all market participants at the same time, the holdings of such series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act, or such holdings are not made available to all market participants at the same time pursuant to Rule 8.900-E(d)(2)(C)(ii) and such issue persists past the trading day in which it occurred;
    - (iv) if the Exchange has halted trading in a series of Managed Portfolio Shares pursuant to Rule 8.900-E(d)(2)(C)(i), such issue persists past the trading day in which it occurred;
    - (v) if the Investment Company issuing the Managed Portfolio Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares;

- (vi) if any of the continued listing requirements set forth in Rule 8.900-E are not continuously maintained;
  - (vii) if any of the statements or representations regarding (a) the description of the portfolio, (b) limitations on portfolio holdings, or (c) the applicability of Exchange listing rules, specified in the Exchange's rule filing pursuant to Section 19(b) of the Securities Exchange Act of 1934 to permit the listing and trading of a series of Managed Portfolio Shares, are not continuously maintained; or
  - (viii) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.
- (C) Trading Halt.
- (i) The Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed 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 Managed 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 portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.
  - (ii) If the Exchange becomes aware that: (a) the Verified Intraday Indicative Value of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (b) the net asset value with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (c) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (d) such holdings are not made available to all market participants at the same time (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares), it will halt trading in such series until such time as the Verified Intraday Indicative Value, the net asset value, or the holdings are available, as required.
- (D) Termination. Upon termination of an Investment Company, the Exchange requires that Managed Portfolio Shares issued in connection with such entity be removed from Exchange listing.
- (E) Voting. Voting rights shall be as set forth in the applicable Investment Company prospectus and/or statement of additional information.

- (e) Limitation of Exchange Liability. Neither the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the open end management investment company in connection with issuance of Managed Portfolio Shares; the Verified Intraday Indicative Value; the amount of any dividend equivalent payment or cash distribution to holders of Managed Portfolio Shares; net asset value; or other information relating to the purchase, redemption, or trading of Managed Portfolio Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority when the Exchange is acting in the capacity of a Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.
- (f) Disclosures. The provisions of this subparagraph apply only to series of Managed Portfolio Shares that are the subject of an order by the Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 and are not otherwise subject to prospectus delivery requirements under the Securities Act of 1933. The Exchange will inform its ETP Holders regarding application of this subparagraph to a particular series of Managed Portfolio Shares by means of an information circular prior to commencement of trading in such series.

The Exchange requires that ETP Holders provide to all purchasers of a series of Managed Portfolio Shares a written description of the terms and characteristics of those securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such a purchaser. In addition, ETP Holders shall include such a written description with any sales material relating to a series of Managed Portfolio Shares that is provided to customers or the public. Any other written materials provided by an ETP Holder to customers or the public making specific reference to a series of Managed Portfolio Shares as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of (the series of Managed Portfolio Shares) has been prepared by the (open-end management investment company name) and is available from your broker. It is recommended that you obtain and review such circular before purchasing (the series of Managed Portfolio Shares)."

An ETP Holder carrying an omnibus account for a non-ETP Holder broker-dealer is required to inform such non-ETP Holder that execution of an order to purchase a series of Managed Portfolio Shares for such omnibus account will be deemed to constitute agreement by the non-ETP Holder to make such written description available to its customers on the same terms as are directly applicable to ETP Holders under this rule.

Upon request of a customer, an ETP Holder shall also provide a prospectus for the particular series of Managed Portfolio Shares.

## 4. Texas Stock Exchange LLC Proposed Rules

## Rule 17.150. Proxy Portfolio Shares

- (a) The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Proxy Portfolio Shares that meet the criteria of this TXSE Rule.
- (b) Applicability. This TXSE Rule is applicable only to Proxy Portfolio Shares. Except to the extent inconsistent with this TXSE Rule, or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on the Exchange of such securities. Proxy Portfolio Shares are included within the definition of "security" or "securities" as such terms are used in the TXSE Rules.
  - (1) The Exchange will file separate proposals under Section 19(b) of the Exchange Act before the listing and trading of a series of Proxy Portfolio Shares.
  - (2) Transactions in Proxy Portfolio Shares will occur throughout the Exchange's Regular Trading Hours.
  - (3) Minimum Price Variance. The minimum price variation for quoting and entry of orders in Proxy Portfolio Shares is \$0.01.
  - (4) Surveillance Procedures. The Exchange will implement and maintain written surveillance procedures for Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will upon request by the Exchange make available to the Exchange the daily Fund Portfolio of each series of Proxy Portfolio Shares.
  - (5) If the investment adviser to the Investment Company issuing 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 of and/or changes to the Fund Portfolio, the Proxy Basket 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 Fund Portfolio, the Proxy Basket and/or Custom Basket, as applicable, or has access to nonpublic information regarding the Fund Portfolio, the Proxy Basket and/or Custom Basket, as applicable, or changes thereto must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund Portfolio and/or the Proxy Basket and/or Custom Basket, as applicable, or changes thereto.

- (6) Any person or entity, including a custodian, Reporting Authority, distributor or administrator, who has access to nonpublic information regarding the Fund Portfolio, the Proxy Basket or the Custom Basket, as applicable, or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio, the Proxy Basket or the 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 Fund Portfolio, Proxy Basket or the Custom Basket, as applicable.
- (c) Definitions. The following terms as used in the TXSE Rules shall, unless the context otherwise requires, have the meanings herein specified:
- (1) Proxy Portfolio Share. The term “Proxy Portfolio Share” means a security that: (A) represents an interest in an 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 aggregate minimum number in return for a deposit of a specified Proxy Basket or Custom Basket, as applicable, and/or a cash amount with a value equal to the next determined net asset value; (C) when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid specified Proxy Basket or Custom Basket, as applicable, and/or a cash amount with a value equal to the next determined net asset value; and (D) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.
- (2) Fund Portfolio. The term “Fund Portfolio” means the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company’s calculation of net asset value at the end of the business day.
- (3) Reporting Authority. The term “Reporting Authority” in respect of a particular series of Proxy Portfolio Shares means the Exchange, an institution or a reporting service designated by the Exchange or by the exchange that lists a particular series of Proxy Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, the Proxy Basket; the Fund Portfolio; Custom Basket; the amount of any cash distribution to holders of Proxy Portfolio Shares, net asset value, or other information relating to the issuance, redemption or trading of Proxy Portfolio Shares. A series of Proxy Portfolio Shares may have more than one Reporting Authority, each having different functions.

- (4) Normal Market Conditions. 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.
  - (5) Proxy Basket. The term “Proxy Basket” means the identities and quantities of the securities and other assets included in a basket that is designed to closely track the daily performance of the Fund Portfolio, as provided in the exemptive relief under the 1940 Act applicable to a series of Proxy Portfolio Shares. The website for each series of Proxy Portfolio Shares shall disclose the following information regarding the Proxy Basket as required under this TXSE Rule 17.150, to the extent applicable:
    - (A) Ticker symbol;
    - (B) CUSIP or other identifier;
    - (C) Description of holding;
    - (D) Quantity of each security or other asset held; and
    - (E) Percentage weight of the holding in the portfolio.
  - (6) Custom Basket. For purposes of this rule, the term “Custom Basket” means a portfolio of securities that is different from the Proxy Basket and is otherwise consistent with the exemptive relief issued pursuant to the Investment Company Act of 1940 applicable to a series of Proxy Portfolio Shares.
- (d) Initial and Continued Listing. Proxy Portfolio Shares will be listed and traded on the Exchange subject to application of the following criteria:
- (1) Initial Listing. Each series of Proxy Portfolio Shares will be listed and traded on the Exchange subject to application of the following criteria:
    - (A) For each series, the Exchange will establish a minimum number of Proxy Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange.
    - (B) The Exchange will obtain a representation from the issuer of each series of Proxy Portfolio Shares that (i) the net asset value per share for the series will be calculated daily, (ii) each of the following will be made available to all market participants at the same time when disclosed: the net asset value, the Proxy Basket, and the Fund Portfolio and (iii) the issuer and any person acting on behalf of the series of Proxy Portfolio Shares will comply with Regulation Fair Disclosure under the Exchange Act, including with respect to any Custom Basket.

- (C) All Proxy Portfolio Shares shall have a stated investment objective, which shall be adhered to under Normal Market Conditions.
- (2) Continued Listing. Each series of Proxy Portfolio Shares will be listed and traded on the Exchange subject to application of the following continued listing criteria:
  - (A) Proxy Basket and Custom Basket. (i) The Proxy Basket will be publicly disseminated at least once daily and will be made available to all market participants at the same time. (ii) With respect to each Custom Basket utilized by a series of Proxy Portfolio Shares, each business day, before the opening of trading in Regular Trading Hours, 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 from the applicable Proxy Basket only with respect to cash.
  - (B) Fund Portfolio. The Fund Portfolio will at a minimum be publicly disclosed within at least 60 days following the end of every fiscal quarter and will be made available to all market participants at the same time.
  - (C) Suspension of trading or removal. The Exchange will consider the suspension of trading in and will commence delisting proceedings for a series of Proxy Portfolio Shares pursuant to the TXSE Rule Series 16.500 under any of the following circumstances:
    - (i) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Proxy Portfolio Shares, there are fewer than 50 beneficial holders of the series of Proxy Portfolio Shares;
    - (ii) if either the Proxy Basket or Fund Portfolio is not made available to all market participants at the same time;
    - (iii) if the Investment Company issuing the Proxy Portfolio Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission or the Commission staff under the 1940 Act to the Investment Company with respect to the series of Proxy Portfolio Shares;
    - (iv) if any of the requirements set forth in this rule are not continuously maintained;
    - (v) if any of the applicable Continued Listing Representations for the issue of Proxy Portfolio Shares are not continuously met; or
    - (vi) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

## (D) Trading Halt.

- (i) The Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of 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 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 Basket or Fund Portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.
- (ii) If the Exchange becomes aware that one of the following is not being made available to all market participants at the same time: the net asset value, the Proxy Basket or the Fund Portfolio with respect to a series of Proxy Portfolio Shares, then the Exchange will halt trading in such series until such time as the net asset value, the Proxy Basket or the Fund Portfolio is available to all market participants, as applicable.

(E) Termination. Upon termination of an Investment Company, the Exchange requires that Proxy Portfolio Shares issued in connection with such entity be removed from listing on the Exchange.

(F) Voting. Voting rights shall be as set forth in the applicable Investment Company prospectus and/or statement of additional information.

- (e) Limitation of Exchange Liability. Neither the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Proxy Portfolio Shares; the amount of any dividend equivalent payment or cash distribution to holders of Proxy Portfolio Shares; net asset value; or other information relating to the purchase, redemption or trading of Proxy Portfolio Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority when the Exchange is acting in the capacity of a Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

**Proposed:** July 31, 2025 (Release No. 34-103604; File No. 10-249).

## Rule 17.160. Managed Portfolio Shares

- (a) The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Managed Portfolio Shares that meet the criteria of this TXSE Rule.
- (b) Applicability. This TXSE Rule is applicable only to Managed Portfolio Shares. Except to the extent inconsistent with this TXSE Rule, or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on the Exchange of such securities. Managed Portfolio Shares are included within the definition of "security" or "securities" as such terms are used in the TXSE Rules.
  - (1) TXSE will file separate proposals under Section 19(b) of the Exchange Act before the listing and trading of a series of Managed Portfolio Shares. All statements or representations contained in such rule filing regarding (a) the description of the portfolio or reference assets; (b) limitations on portfolio holdings or reference assets; (c) dissemination and availability of the reference asset or Intraday Indicative Values and Verified Intraday Indicative Values (as applicable); or (d) the applicability of TXSE listing rules specified in such proposals shall constitute continued listing standards.
  - (2) Transactions in Managed Portfolio Shares will occur throughout the TXSE's Regular Trading Hours.
  - (3) Minimum Price Variance. The minimum price variation for quoting and entry of orders in Managed Portfolio Shares is \$0.01.
  - (4) Surveillance Procedures. The Exchange will implement and maintain written surveillance procedures for Managed 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 Managed Portfolio Shares.
  - (5) If the investment adviser to the Investment Company issuing Managed 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 of and/or changes to such Investment Company portfolio and/or the Creation Basket. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's portfolio composition or has access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket.

- (6) Any person or entity, including an AP Representative, custodian, Reporting Authority, distributor or administrator, who has access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. 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 portfolio or Creation Basket.
- (c) Definitions. The following terms as used in the TXSE Rules shall, unless the context otherwise requires, have the meanings herein specified:
- (1) Managed Portfolio Share. The term "Managed Portfolio Share" means a security that (a) represents an interest in an 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 Creation Unit, or multiples thereof, in return for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value and delivered to the Authorized Participant (as defined in the Investment Company's Form N-1A filed with the Commission) through a Confidential Account; (c) when aggregated into a Redemption Unit, or multiples thereof, may be redeemed for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value delivered to the Confidential Account for the benefit of the Authorized Participant; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.
- (2) Verified Intraday Indicative Value. The term "Verified Intraday Indicative Value" is the indicative value of a Managed Portfolio Share based on all of the holdings of a series of Managed Portfolio Shares as of the close of business on the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, priced and disseminated in one second intervals during Regular Trading Hours by the Reporting Authority.
- (3) AP Representative. The term "AP Representative" means an unaffiliated broker-dealer, with which an Authorized Participant has signed an agreement to establish a Confidential Account for the benefit of such Authorized Participant, that will deliver or receive, on behalf of the Authorized Participant, all consideration to or from the Investment Company in a creation or redemption. An AP Representative will not be permitted to disclose the Creation Basket to any person, including the Authorized Participants.

- (4) Confidential Account. The term “Confidential Account” means an account owned by an Authorized Participant and held with an AP Representative on behalf of the Authorized Participant. The account will be established and governed by contractual agreement between the AP Representative and the Authorized Participant solely for the purposes of creation and redemption, while keeping confidential the Creation Basket constituents of each series of Managed Portfolio Shares, including from the Authorized Participant. The books and records of the Confidential Account will be maintained by the AP Representative on behalf of the Authorized Participant.
- (5) Creation Basket. The term “Creation Basket” means on any given business day the names and quantities of the specified instruments and/or an amount of cash that are required for an AP Representative to deposit in-kind on behalf of an Authorized Participant in exchange for a Creation Unit and the names and quantities of the specified instruments and/or an amount of cash that will be transferred in-kind to an AP Representative on behalf of an Authorized Participant in exchange for a Redemption Unit, which will be identical and will be transmitted to each AP Representative before the commencement of trading.
- (6) Creation Unit. The term “Creation Unit” means a specified minimum number of Managed Portfolio Shares issued by an Investment Company at the request of an Authorized Participant in return for a designated portfolio of instruments and/or cash.
- (7) Redemption Unit. The term “Redemption Unit” means a specified minimum number of Managed Portfolio Shares that may be redeemed to an Investment Company at the request of an Authorized Participant in return for a portfolio of instruments and/or cash.
- (8) Reporting Authority. The term “Reporting Authority” in respect of a particular series of Managed Portfolio Shares means the Exchange, the exchange that lists a particular series of Managed Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges), an institution or a reporting service designated by the Investment Company as the official source for calculating and reporting information relating to such series, including, the net asset value, the Verified Intraday Indicative Value or other information relating to the issuance, redemption or trading of Managed Portfolio Shares. A series of Managed Portfolio Shares may have more than one Reporting Authority, each having different functions.
- (9) Normal Market Conditions. 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.

- (d) Initial and Continued Listing. Managed Portfolio Shares will be listed and traded on the Exchange subject to application of the following criteria:
- (1) Initial Listing. Each series of Managed Portfolio Shares will be listed and traded on the Exchange subject to application of the following initial listing criteria:
    - (A) For each series, the Exchange will establish a minimum number of Managed Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange.
    - (B) The Exchange will obtain a representation from the Investment Company that issues each series of Managed Portfolio Shares that the net asset value per share for the series will be calculated daily and that the net asset value will be made available to all market participants at the same time.
    - (C) All Managed Portfolio Shares shall have a stated investment objective, which shall be adhered to under Normal Market Conditions.
  - (2) Continued Listing. Each series of Managed Portfolio Shares will be listed and traded on the Exchange subject to application of the following continued listing criteria:
    - (A) Verified Intraday Indicative Value. The Verified Intraday Indicative Value for Managed Portfolio Shares will be widely disseminated by the Reporting Authority and/or by one or more major market data vendors in one second intervals during Regular Trading Hours, and will be disseminated to all market participants at the same time.
    - (B) Suspension of trading or removal. The Exchange will consider the suspension of trading in, and will commence delisting proceedings under the TXSE Rule Series 16.500, for a series of Managed Portfolio Shares, under any of the following circumstances:
      - (i) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Portfolio Shares, there are fewer than 50 beneficial holders of the series of Managed Portfolio Shares for 30 or more consecutive trading days;
      - (ii) if the Exchange has halted trading in a series of Managed Portfolio Shares because the Verified Intraday Indicative Value is interrupted pursuant to TXSE Rule 17.160(d)(2)(C)(ii) and such interruption persists past the trading day in which it occurred or is no longer available;
      - (iii) if the Exchange has halted trading in a series of Managed Portfolio Shares because the net asset value with respect to such series of Managed Portfolio Shares is not disseminated to all

market participants at the same time, the holdings of such series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act, or such holdings are not made available to all market participants at the same time pursuant to TXSE Rule 17.160(d)(2)(C)(ii) and such issue persists past the trading day in which it occurred;

- (iv) if the Exchange has halted trading in a series of Managed Portfolio Shares pursuant to TXSE Rule 17.160(d)(2)(C)(i), such issue persists past the trading day in which it occurred;
- (v) if the Investment Company issuing the Managed Portfolio Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares;
- (vi) if any of the continued listing requirements set forth in this TXSE Rule 17.160 are not continuously maintained;
- (vii) if the series of Managed Portfolio Shares is not in compliance with any statements or representations included in the applicable rule proposal under Section 19(b) of the Act regarding: (a) the description of the portfolio or reference assets; (b) limitations on portfolio holdings or reference assets; (c) dissemination and availability of the reference asset or intraday indicative values and Verified Intraday Indicative Values; or (d) the applicability of TXSE listing rules specified in such proposals; or
- (viii) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

(C) Trading Halt.

- (i) The Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed 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 Managed 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 portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

- (ii) If the Exchange becomes aware that: (a) the Verified Intraday Indicative Value of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (b) the net asset value with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (c) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (d) such holdings are not made available to all market participants at the same time (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares), it will halt trading in such series until such time as the Verified Intraday Indicative Value, the net asset value, or the holdings are available, as required.
- (D) Termination. Upon termination of an Investment Company, the Exchange requires that Managed Portfolio Shares issued in connection with such entity be removed from Exchange listing.
- (E) Voting. Voting rights shall be as set forth in the applicable Investment Company prospectus and/or statement of additional information.
- (e) Limitation of Exchange Liability. Neither the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Managed Portfolio Shares; the Verified Intraday Indicative Value; the amount of any dividend equivalent payment or cash distribution to holders of Managed Portfolio Shares; net asset value; or other information relating to the purchase, redemption or trading of Managed Portfolio Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority when the Exchange is acting in the capacity of a Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent or the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in one or more underlying securities.
- (f) Disclosures. The provisions of this subparagraph apply only to series of Managed Portfolio Shares that are the subject of an order by the Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 and are not otherwise

subject to prospectus delivery requirements under the Securities Act. The Exchange will inform its Members regarding application of this subparagraph to a particular series of Managed Portfolio Shares by means of an information circular prior to commencement of trading in such series.

The Exchange requires that Members provide to all purchasers of a series of Managed Portfolio Shares a written description of the terms and characteristics of those securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, Members shall include such a written description with any sales material relating to a series of Managed Portfolio Shares that is provided to customers or the public. Any other written materials provided by a Member to customers or the public making specific reference to a series of Managed Portfolio Shares as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of (the series of Managed Portfolio Shares) has been prepared by the (open-end management investment company name) and is available from your broker. It is recommended that you obtain and review such circular before purchasing (the series of Managed Portfolio Shares)."

A Member carrying an omnibus account for a non-Member broker-dealer is required to inform such non-Member that execution of an order to purchase a series of Managed Portfolio Shares for such omnibus account will be deemed to constitute agreement by the non-Member to make such written description available to its customers on the same terms as are directly applicable to Members under this rule.

Upon request of a customer, a Member shall also provide a prospectus for the particular series of Managed Portfolio Shares.

**Proposed:** July 31, 2025 (Release No. 34-103604; File No. 10-249).

At the time of this handbook's publication, the SEC was poised to issue a notice and order on an exemptive application (Application) filed by Dimensional Fund Advisors LP for relief (Relief), permitting it to offer index-based or actively managed funds that have one or more mutual fund share classes and an ETF share class (Dual Class Funds). Under the Relief provided, an existing mutual fund could add an ETF share class or an existing ETF could add mutual fund share classes; and in each case, mutual fund class holders may be able to exchange their shares for ETF class shares on a tax-free basis.

Dual Class Funds have previously only been permitted for one fund sponsor and only for that sponsor's index funds. In the adopting release for the ETF Rule, the SEC explained its hesitancy to grant additional exemptive relief for Dual Class Funds as, in part, a function of the potential for the ETF share class of a Dual Class Fund — given its inherent tax efficiency, and low cash drag and brokerage expenses — to cross-subsidize the mutual fund class(es). However, after SEC issues a subsequent notice and order for the Relief, the staff is expected to begin issuing copycat notices and orders to all applicants that file substantially the same exemptive application.

In the Application, which is currently believed to provide a model for the Relief, cross-subsidization is treated as a conflict of interest that can be addressed with robust board oversight, and the Application establishes baseline requirements for such board oversight. Those requirements contemplate three-stage reporting by the adviser to the board, followed by the board's approval, amendment or renewal, as applicable, of a multi-class plan for the Dual Class Fund (Plan). The three-stage reporting required includes the following:

- Prior to the board's initial approval of a Plan, an analysis of the costs each share class is expected to incur and the benefits each share class is expected to enjoy operating as one class of a Dual Class Fund and pursuant to the Plan (referred to as the Initial Adviser Report);
- Concurrent with providing the Initial Adviser Report, the adviser must recommend, and the board must approve, a framework for monitoring the extent to which the fund and classes are operating as described in the Initial Adviser Report (referred to as the Ongoing Monitoring Process); and
- Annually, following the implementation of a Plan, the adviser must refresh the cost-benefit analysis provided as part of the Initial Adviser Report, filtering in the results of the Ongoing Monitoring Process (referred to as the Ongoing Oversight Report). Based thereon, the adviser may recommend renewal of the Plan or approval of an amended Plan. In either case, in acting on the adviser's recommendation, the board must act on the adviser's recommendation and find that such action is in the best interest of each class and the fund as a whole.

The handbook includes a form of the Application that you may use to seek Relief, if the SEC grants an exemptive order on the Application.

File No. 812-\_\_\_\_\_

As filed with the Securities and Exchange Commission on [Date]

U.S. SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

APPLICATION PURSUANT TO SECTION 6(c) OF THE INVESTMENT COMPANY ACT OF 1940, AS AMENDED ("ACT"), FOR AN ORDER OF EXEMPTION FROM SECTIONS 2(a)(32), 5(a)(1), 18(f)(1), 18(i), 22(d) AND 22(e) OF THE ACT AND RULE 22c-1 UNDER THE ACT AND PURSUANT TO SECTIONS 6(c) AND 17(b) OF THE ACT FOR AN ORDER OF EXEMPTION FROM SECTIONS 17(a)(1) AND 17(a)(2) OF THE ACT

YOUR MUTUAL FUND COMPANY

YOUR ETF TRUST

YOUR ADVISOR LLC

[Street Address]

[City, State] [Zipcode]

*Please direct all communications regarding this Application to:*

[Name]

[Title]

Your Advisor LLC

[Street Address]

[City, State] [Zipcode]

[Email]

*With copies to:*

[Name]

[Counsel/Firm]

[Street Address]

[City, State] [Zipcode]

[Email]

This Application (including Exhibits) contains \_\_ pages.

UNITED STATES OF AMERICA  
BEFORE THE  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

In the Matter of:	) APPLICATION PURSUANT TO SECTION 6(c)
	) OF THE INVESTMENT COMPANY ACT
YOUR MUTUAL FUND COMPANY	) OF 1940, AS AMENDED ("ACT"), FOR
YOUR ETF TRUST	) AN ORDER OF EXEMPTION FROM
YOUR ADVISOR LLC	) SECTIONS 2(a)(32), 5(a)(1), 18(f)(1),
	) 18(i), 22(d) AND 22(e) OF THE ACT
[Street Address]	) AND RULE 22c-1 UNDER THE ACT AND
[City, State] [Zipcode]	) PURSUANT TO SECTIONS 6(c) AND 17(b)
	) OF THE ACT FOR AN ORDER OF
Investment Company Act of 1940	) EXEMPTION FROM SECTIONS 17(a)(1) AND
File No. 812-_____	) 17(a)(2) OF THE ACT
	)

**I. INTRODUCTION**

Your Mutual Fund Company ("**MF Company**") and Your ETF Trust ("**ETF Trust**," and together with **MF Company**, each a "**Company**," and together, the "**Companies**") and Your Advisor LLC ("**Advisor**") (the Companies and Advisor together are the "**Applicants**") hereby file this application, as amended (the "**Application**"), for an order ("**Order**") of the Securities and Exchange Commission (the "**Commission**") under Section 6(c) of the Investment Company Act of 1940, as amended (the "**Act**"), for an exemption from Sections 2(a)(32), 5(a)(1), 18(f)(1), 18(i), 22(d) and 22(e) of the Act and Rule 22c-1 under the Act and under Sections 6(c) and 17(b) of the Act for an exemption from Sections 17(a)(1) and 17(a)(2) of the Act.<sup>1</sup> Applicants are requesting that the Order apply not only to the Applicants, but also to any existing and future series of the Companies and any other existing or future open-end management investment companies (or series thereof) registered under the Act (each a "**Fund**," and together, the "**Funds**") that are advised by the Advisor.<sup>2</sup> Applicants request an Order that would permit a Fund to offer one class of exchange-traded shares that operates as an exchange-traded fund (an "**ETF Class**," and such shares, "**ETF Shares**") and one or more classes of

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<sup>1</sup> All entities that currently intend to rely on the Order are named as Applicants. Any other entity, existing now or in the future, that relies on the Order in the future will comply with the terms and conditions in the Application.

<sup>2</sup> The term "Advisor" includes (i) Your Advisor LLC and (ii) any entity controlling, controlled by or under common control with, Your Advisor LLC or its successors. For the purposes of the requested order, "successor" is limited to an entity resulting from a reorganization into another jurisdiction or a change in the type of business organization.

shares that are not exchange-traded (each such class, a “**Mutual Fund Class**,” and such shares, “**Mutual Fund Shares**,” and each such Fund, a “**Multi-Class ETF Fund**”). The Order would provide Funds with two broad categories of relief:

1) the relief necessary to permit or continue standard exchange-traded fund (“**ETF**”) operations consistent with Rule 6c-11 under the Act (“**ETF Operational Relief**”) and 2) the relief necessary for a Fund to offer an ETF Class and one or more Mutual Fund Classes (“**ETF Class Relief**”).

Pursuant to the ETF Operational Relief, the Order would permit (i) ETF Shares of the Multi-Class ETF Funds to be listed on a national securities exchange (“**Exchange**”), as defined in Rule 6c-11, and traded at market-determined prices; (ii) ETF Shares to be issued to and redeemed by “**Authorized Participants**” in “**Creation Units**” only (each term as defined in Rule 6c-11), except with respect to the Exchange Privilege (as defined below) and as permitted by Rule 6c-11(a)(2); (iii) certain affiliated persons of a Multi-Class ETF Fund to purchase Creation Units with (or redeem Creation Units for) “**Baskets**,” as defined in Rule 6c-11, and (iv) certain Multi-Class ETF Funds that include foreign investments in their Baskets to pay redemption proceeds more than seven calendar days after ETF Shares are tendered for redemption. As described below, the ETF Operational Relief would provide the Multi-Class ETF Funds with the same relief as contained in Rule 6c-11, generally subject to the same conditions and requirements contained in Rule 6c-11.<sup>3</sup>

Pursuant to the ETF Class Relief, the Order would permit a Multi-Class ETF Fund to offer one ETF Class and one or more Mutual Fund Classes. This Multi-Class ETF Fund structure would comply with Rule 18f-3 under the Act, except for certain ways in which an ETF Class and Mutual Fund Class(es) would have different rights and obligations, as described below.

## II. THE APPLICANTS

### a. The Companies

The MF Company is organized as a [Maryland corporation]. ETF Trust is organized as a [Delaware statutory trust]. The Companies are registered with the Commission as open-end management investment companies under the Act. The offerings of the shares of the Companies also are registered pursuant to the Securities Act of 1933, as amended (“**Securities Act**”). The Funds that initially would rely on the relief are separate investment portfolios of the Companies and pursue distinct investment objectives and strategies.

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<sup>3</sup> As discussed in more detail below, a Multi-Class ETF Fund is not able to operate in reliance on Rule 6c-11.

## b. The Advisor

The Advisor is a [Delaware limited liability company] and is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940, as amended (the “**Advisers Act**”). Any other Advisor also will be registered with the Commission as an investment adviser under the Advisers Act. The Advisor serves or will serve as the investment adviser to each Fund pursuant to an investment management agreement with the relevant Company.

## III. BACKGROUND

The Commission granted a small number of exemptive orders between 2000 and 2007 permitting certain existing funds operating as mutual funds to offer a class of exchange-traded shares.<sup>4</sup> In 2019, the Commission adopted Rule 6c-11 under the Act to provide the exemptive relief necessary under the Act to permit ETF operations.<sup>5</sup> However, the Commission determined not to provide the exemptive relief necessary to allow for ETF classes as part of Rule 6c-11. The Adopting Release explains that ETF class relief raises policy considerations that are different from those that the Commission intended to address in Rule 6c-11. The Adopting Release specifically notes that an ETF class that transacts with Authorized Participants on an in-kind basis and a mutual fund class that transacts with shareholders on a cash basis may give rise to differing costs to the portfolio. As a result, certain costs may result from transactions through one class, but all shareholders generally would bear the costs.<sup>6</sup>

The Commission concluded that share class ETFs should request relief through the exemptive applications process so that the Commission may assess all relevant policy considerations in the context of the facts and circumstances of particular applicants.<sup>7</sup>

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<sup>4</sup> Vanguard Index Funds, Investment Company Act Release Nos. 24680 (Oct. 6, 2000) (notice) and 24789 (Dec. 12, 2000) (order); The Vanguard Group, Inc., Investment Company Act Release Nos. 26282 (Dec. 2, 2003) (notice) and 26317 (Dec. 30, 2003) (order); Vanguard International Equity Index Funds, Investment Company Act Release Nos. 26246 (Nov. 3, 2003) (notice) and 26281 (Dec. 1, 2003) (order); and Vanguard Bond Index Funds, Investment Company Act Release Nos. 27750 (Mar. 9, 2007) (notice) and 27773 (April 2, 2007) (order).

<sup>5</sup> Exchange-Traded Funds, Release No. IC-33646 (Sept. 25, 2019) (“**Adopting Release**”).

<sup>6</sup> Adopting Release at 122-123 (noting that “costs can include brokerage and other costs associated with buying and selling portfolio securities in response to mutual fund share class cash inflows and outflows, cash drag associated with holding the cash necessary to satisfy mutual fund share class redemptions, and distributable capital gains associated with portfolio transactions.”).

<sup>7</sup> Adopting Release at 124.

#### IV. IN SUPPORT OF THE APPLICATION

Applicants are filing the Application because they believe that the ability of a Fund to offer both Mutual Fund Shares and ETF Shares could be beneficial to the Fund and to shareholders of each type of class, as discussed below. Applicants believe that the multi-class structure will allow investors to choose the manner in which they wish to hold interests in a Multi-Class ETF Fund based on the share class characteristics that are most important to the investor.

#### Initial Evaluation and Approval

Each Multi-Class ETF Fund will operate pursuant to a written plan required by Rule 18f-3(d) that addresses the Mutual Fund Class(es) and the ETF Class (the “**multiple class plan**”). Before the first issuance of a share of any class under a multiple class plan, and before any material amendment of such a plan, the board of directors of the Fund (“**Board**”), including the directors who are not interested persons of the Fund under Section 2(a)(19) of the Act (“**Independent Directors**”), will find that the **multiple class plan** is in the best interests of each Mutual Fund Class and the ETF Class individually and of the Multi-Class ETF Fund as a whole. As required by Rule 18f-3, before any Board vote on a multiple class plan including an ETF Class, the directors will request and evaluate, and any agreement relating to the class arrangement will require the Advisor to furnish, such information as may be reasonably necessary to evaluate the multiple class plan. To assist in the Board’s finding, the Advisor<sup>8</sup> shall prepare a written report pertaining to the Multi-Class ETF Fund (“**Initial Advisor Report**”). The Initial Advisor Report shall contain the following information:<sup>9</sup>

1. a description of the reasonably expected<sup>10</sup> benefits and costs to each class individually and the Multi-Class ETF Fund as a whole, including, as applicable:
  - a. the sources of potential cost savings and other benefits of operating a Multi-Class ETF Fund structure;
  - b. a description of how each of the ETF Class and Mutual Fund Class(es) will be affected by (i) reasonably expected cash flows and costs associated with portfolio transactions, (ii) reasonably expected cash levels, (iii) reasonably expected distributable capital gains and (iv) (for existing Funds only) the extent, and reasonably expected realization, of any unrealized capital gains/losses or carry over capital losses;

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<sup>8</sup> If a Fund retains or has retained an investment sub-adviser, the Fund’s primary Advisor will be responsible for complying with the conditions.

<sup>9</sup> The Advisor may include any other information it deems necessary or helpful for the Board.

<sup>10</sup> Information that is “reasonably expected” or “reasonably estimated” throughout this application may be based on reasonable assumptions and good faith estimates by the Advisor. This information will be based on historical data for existing Funds, if applicable.

2. a discussion of how the Advisor intends to manage the reasonably expected costs associated with the transition to a Multi-Class ETF Fund,<sup>11</sup> as applicable;
3. a discussion of the appropriateness of the Fund's investment strategy for the Multi-Class ETF Fund structure;<sup>12</sup> and
4. a discussion of any other potential material conflicts of interest, including any other sources of potential cross-subsidization, identified by the Advisor associated with operating a Multi-Class ETF Fund.

### Ongoing Monitoring Process

At the time of the Board's initial approval of the multiple class plan, the Advisor will recommend to the Board for approval a framework for ongoing monitoring of certain numerical thresholds ("**Ongoing Monitoring Process**"), which is intended to assist the Board with its ongoing oversight of the Multi-Class ETF Fund structure. The Ongoing Monitoring Process will consist of:

1. Monitoring Thresholds. The Advisor will recommend to the Board approval of certain numeric thresholds, the method for calculating such thresholds, and the time periods over which to measure the Multi-Class ETF Fund's performance against such numerical thresholds with respect to the Multi-Class ETF Fund's: (i) costs associated with portfolio transactions, (ii) cash levels and (iii) capital gains distributions.<sup>13</sup> The numerical threshold levels (including any changes thereto), the method of calculating the thresholds, and the time periods over which to measure the Multi-Class ETF Fund's performance against such numerical thresholds will be reasonably designed to assist in the identification of material conflicts of interest between the Mutual Fund Class(es) and the ETF Class, including disparities in costs to the Mutual Fund Class(es), on the one hand, and ETF Class, on the other.<sup>14</sup> Any recommended changes to the numerical thresholds, or changes to the time periods over which to measure the Multi-Class ETF Fund's performance against such numerical thresholds will

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<sup>11</sup> This may include the potential for higher cross-subsidization between the ETF Class and the Mutual Fund Class(es) at the outset when adding a Mutual Fund Class to an existing ETF or adding an ETF Class to an existing mutual fund.

<sup>12</sup> Appropriateness may depend on many factors, including, but not limited to: (i) the impact of daily disclosure of portfolio holdings; and (ii) any anticipated capacity or other constraints. See Adopting Release at 58-59 (discussing the ability of an ETF to suspend the issuance of Creation Units only for a limited time and only due to extraordinary circumstances).

<sup>13</sup> The Advisor may recommend establishing additional thresholds designed to identify other conflicts of interest between the Mutual Fund Class(es) and the ETF Class.

<sup>14</sup> This would include with respect to cash drag from holding cash to meet Mutual Fund Class redemption requests, as well as transaction costs and realized capital gains or other tax consequences due to such requests.

be subject to Board approval. In making its recommendations to the Board, the Advisor will consider historical data pertaining to the Multi-Class ETF Fund or other existing Funds that the Advisor advises, to the extent the Advisor believes such data is relevant.<sup>15</sup>

2. **Board Notification.** If a Multi-Class ETF Fund exceeds an established numerical threshold, the Advisor will notify the Board no later than 30 days following the end of the applicable time period in which the threshold was exceeded. The Advisor will provide the Board with a written explanation of the Advisor's assessment of the causes of the Multi-Class ETF Fund exceeding the threshold(s), and any proposed recommendations for what, if any, remedial actions the Multi-Class ETF Fund should take.<sup>16</sup>

### Ongoing Board Approval

In addition to the initial evaluation and approval of the multiple class plan, the Board also will periodically, but in no case less frequently than annually, find that the multiple class plan continues to be in the best interests of each Mutual Fund Class and the ETF Class individually and of the Multi-Class ETF Fund as a whole.<sup>17</sup> To inform this finding, the Advisor will provide a written report to the Board pertaining to the Multi-Class ETF Fund ("Ongoing Advisor Report"). The Ongoing Advisor Report shall contain the following information:<sup>18</sup>

1. a discussion of any observed benefits or cost savings to the Multi-Class ETF Fund resulting from the Multi-Class ETF Fund structure;

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<sup>15</sup> For example, historical data relating to cash levels, costs associated with portfolio transactions, and distributable capital gains.

<sup>16</sup> Examples of remedial actions include: (i) adjustments to the use of in-kind transactions or trade execution strategy to manage costs associated with portfolio transactions; (ii) greater use of credit lines or other sources of cash to reduce uninvested cash; (iii) enhancements to tax lot management and harvesting of capital losses to reduce capital gains distributions; (iv) adjustments to transaction fees, purchase fees and/or redemption fees; and (v) discontinuation of a class, or conversion of an entire class of a Multi-Class ETF Fund into another class of that Multi-Class ETF Fund as otherwise permitted under the Act. The range of remedial measures may vary depending on the particular facts and circumstances relating to a Fund's operations. The Board may consider additional corrective measures if deemed necessary.

<sup>17</sup> As required by condition 2 of this Application, a Multi-Class ETF Fund would also comply with Rule 18f-3(d), which requires that, before any material amendment of a multiple class plan, a majority of the directors of a Multi-Class ETF Fund, and a majority of the Independent Directors, find that the multiple class plan as proposed to be amended, including the expense allocation, is in the best interests of each class individually and the Multi-Class ETF Fund as a whole.

<sup>18</sup> The Advisor may include any other information it deems necessary or helpful for the Board.

2. a discussion of any observed material conflicts of interest between ETF Class and the Mutual Fund Class(es), or observed material negative consequences<sup>19</sup> to the ETF Class or the Mutual Fund Class(es) resulting from the Multi-Class ETF Fund structure, including the following:<sup>20</sup>
  - a. a discussion of how creation and redemption activity in the ETF Class has affected the Mutual Fund Class(es) and how shareholder purchase and redemption activity in the Mutual Fund Class(es) has affected the ETF Class during the prior year,<sup>21</sup> with respect to: (i) cash levels; (ii) short- and long-term capital gains distributions; and (iii) costs associated with portfolio transactions;
  - b. any performance difference between the Mutual Fund Class(es) and the ETF Class due to the difference in dividend payment dates described below; and
3. any other information that the Board requests.

**a. Benefits of an ETF Class for Mutual Fund Class Shareholders**

Among other benefits, Applicants believe that an ETF Class would offer the following significant benefits to shareholders in a Fund's Mutual Fund Classes.

First, in-kind transactions through the ETF Class may contribute to lower portfolio transaction costs and greater tax efficiency. In general, in-kind transactions through the ETF Class in connection with creations and redemptions could allow a Fund to reduce some portfolio management costs. This could be particularly true through the use of the custom basket flexibility permitted under Rule 6c-11. For example, on days when there may be limited cash inflows through the Mutual Fund Classes, in-kind transactions through the ETF Class could allow the Fund to rebalance its portfolio efficiently while keeping cash balances low and without needing to sell and purchase portfolio securities in the market. In-kind redemptions also could serve to limit the realization of capital gains and reduce unrealized capital gains within the portfolio and improve the tax profile of the Fund. This could help shareholders defer capital gains to the extent that portfolio adjustments and cash redemptions require the sale of portfolio securities.

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<sup>19</sup> For example, this may include consequences on portfolio size, liquidity, liquidity risk management, and operations of the Multi-Class ETF Fund.

<sup>20</sup> Among other things, this may also include a discussion of: the impact of the level of exchanges between the Mutual Fund Class(es) and ETF Class; and/or the impact of any transaction fees or similar charges that are applied in connection with creation and redemption activity (for the ETF Class) or purchase or redemption activity (for the Mutual Fund Class(es)) and that are designed to reduce the costs associated with that activity borne by the Multi-Class ETF Fund.

<sup>21</sup> The Advisor may include data from years before the prior year if the Advisor or the Board deems such data helpful.

As described in greater detail below, Applicants also believe that an exchange feature could allow mutual fund shareholders to exchange Mutual Fund Shares for ETF Shares without adverse consequences to the Fund. To the extent that some existing mutual fund shareholders would prefer to hold ETF Shares, the existence of an ETF Class could allow for those shareholders to exchange their shares without disrupting the Fund portfolio or their investments. At the same time, these shareholders could save on transaction costs and potential tax consequences by exchanging shares into the ETF Class of the same Fund.

In addition, the ETF Class would represent an additional distribution channel for a Fund that could lead to additional asset growth and economies of scale. ETFs are an increasingly popular choice for investors and may attract additional investment to a Fund. Greater assets under management may lead to additional cost efficiencies. An improved tax profile for the Fund also may assist the competitive positioning of the Fund for attracting prospective shareholders.

ETF Shares also could allow certain investors to engage in more frequent trading without disrupting the Fund portfolio. For example, following market declines, to the extent that a mutual fund shareholder wanted to engage in tax-loss harvesting, the shareholder could exchange Mutual Fund Shares for ETF Shares and then trade more frequently in the secondary market. Such secondary market transactions would not disrupt the portfolio of the Fund and would help long-term investors avoid the adverse consequences of frequent trading and market timing by a few short-term investors.

#### **b. Benefits of a Mutual Fund Class for ETF Class Shareholders**

Among other benefits, Applicants believe that Mutual Fund Classes would offer the following significant benefits to shareholders in a Fund's ETF Class.

First, investor cash flows through a Mutual Fund Class can be used for efficient portfolio rebalancing. A Fund's portfolio may contain a large number of portfolio positions where small adjustments are made on a daily basis. To the extent that cash flows come into a Fund through a Mutual Fund Class, a portfolio manager may be able to deploy that cash strategically to establish the desired portfolio exposures. Under these circumstances, cash flows through a Mutual Fund Class could help facilitate portfolio management to the benefit of all shareholders, including ETF Class shareholders, particularly if there are no creations through the ETF Class on a given day.

Second, cash flows through a Mutual Fund Class may allow for greater Basket flexibility for creations and redemptions of ETF Shares, which could promote arbitrage efficiency and smaller spreads on the trading of ETF Shares in the secondary market. Some Funds may hold a large number of securities with a wide range of portfolio exposures. If cash flows from a Mutual Fund Class can be utilized strategically by the portfolio manager to obtain exposure to some portfolio positions (e.g., small portfolio positions), the portfolio manager could specify a smaller number of different securities for the Baskets used for creations and redemptions of ETF Class Shares by Authorized Participants. As recognized in the Adopting Release, if Baskets contain a smaller number of securities, Authorized Participants may be able to assemble or liquidate such Baskets with lower transaction costs.

Reducing the costs of Authorized Participants to create and redeem ETF Shares potentially could result in greater arbitrage efficiency and smaller spreads in connection with the trading of ETF Shares in the secondary market.<sup>22</sup>

With respect to existing Funds, offering an ETF Class would permit investors that prefer the ETF distribution channel to gain access to established Fund investment strategies. Many Funds have a well-established, strong reputation and track record. For those investors who prefer investing in ETFs and are interested in existing Funds, an ETF Class could be an attractive investment opportunity. Assets under management and performance track record also can be important criteria for an ETF to qualify for certain distribution platforms maintained by financial intermediaries. An ETF Class of an existing Fund could benefit from pre-existing assets and performance, which could improve the distribution of the ETF Shares to investors.

Applicants also believe that the establishment of Mutual Fund Class(es) as part of an existing ETF could represent an additional distribution channel for a Fund that could lead to additional asset growth and economies of scale as it attracts additional investments into the Fund, which benefits the Fund and all of its shareholders. Retirement, or "401(k)", plans may not offer ETFs to their plan participants, and so such retirement plan investors often invest in mutual funds. If the relief sought by this Application were granted, Mutual Fund Shares of a Multi-Class ETF Fund could be made available to retirement plan participants on retirement plan platforms that do not currently offer ETFs, which could be beneficial to both ETF Class and Mutual Fund Class shareholders of the Multi-Class ETF Fund. By having a Mutual Fund Class, a Multi-Class ETF Fund may benefit from having access to a retirement or "401(k)" distribution channel and ultimately from greater scale. Such asset growth could make it possible for a Fund's shareholders to realize the benefits of breakpoints, if any, and for a Fund to spread fixed costs over a larger asset base, driving economies of scale to the benefit of all shareholders. Similarly, the ability to add an ETF Class to a Mutual Fund would allow a Fund that already has access to the retirement distribution channel to attract assets from investors seeking access to the same strategy through an ETF.

Applicants also believe that the establishment of an ETF Class as part of an existing Fund could lead to cost efficiencies. In terms of fund expenses, an ETF Class could have initial and ongoing advantages for its shareholders. As an initial matter, creating an ETF Class of an existing Fund should entail lower organizational costs as compared to establishing a new ETF.<sup>23</sup> As an ongoing matter, an ETF Class also could have lower expenses as a result of economies

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<sup>22</sup> Adopting Release at 83.

<sup>23</sup> As noted above, the Initial Advisor Report will address any potential for higher cross-subsidization between classes at the outset when adding a new type of class to an existing Fund, or launching a new Fund that is a Multi-Class ETF Fund, as well as possible actions to minimize the impact of any such cross-subsidization. Possible actions could include having a new class bear its own organizational costs or subjecting such costs to an expense limitation arrangement with the Advisor.

of scale such as breakpoints on service contracts or advisory contracts. These are the same types of benefits that the Commission originally recognized in adopting Rule 18f-3.<sup>24</sup>

Tax-free exchanges of shares from the Mutual Fund Class for shares of the ETF Class also may accelerate the development of an ETF shareholder base. Subsequent secondary market transactions by the ETF Class shareholders could generate greater trading volume, resulting in lower trading spreads and/or premiums or discounts in the market prices of the ETF Shares to the benefit of ETF shareholders.

### **c. Adopting Release Concerns about ETF Classes**

The Adopting Release indicates that share class ETFs raise certain additional policy considerations. Specifically, the Commission notes that the cash flows associated with one class or another could impact a fund's portfolio, generating costs that shareholders of all classes would share. With respect to the potential consequences of cash flows, the Commission identifies three categories of costs: 1) brokerage and other costs associated with buying and selling portfolio securities in response to mutual fund share class inflows and outflows; 2) cash drag associated with holding the cash necessary to satisfy mutual fund share class redemptions; and 3) distributable capital gains associated with portfolio transactions. Applicants believe that each of these issues could be considered by the Advisor and the Board initially and on an ongoing basis in determining whether a particular Fund should offer or continue to offer both Mutual Fund Classes and an ETF Class.

As described above, cash inflows also may allow a portfolio manager to make specific portfolio adjustments that could be more difficult to achieve strictly using Basket transactions through an ETF Class. At times, an active ETF may not be able to establish desired portfolio positions purely through in-kind creation and redemption activity, and therefore could incur portfolio transaction costs if it becomes necessary to sell portfolio securities in order to generate cash to invest in new positions. Accordingly, the possibility of cash inflows through a Mutual Fund Class and in-kind transactions through an ETF class is a combination that could allow for benefits to all Fund shareholders: in-kind creations and redemptions through the ETF Class could save some portfolio transaction costs, while cash inflows through the Mutual Fund Class could save transaction costs that the active manager might have incurred if otherwise forced to liquidate holdings to reposition the portfolio.

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<sup>24</sup> See Exemption for Open-End Management Investment Companies Issuing Multiple Classes of Shares; Disclosure by Multiple Class and Master-Feeder Funds; Class Voting on Distribution Plans, Investment Company Act Release No. 20915 (Feb. 23, 1995) (adopting release) ("Fund sponsors assert that multiple classes may enable funds to attract larger asset bases, permitting them to spread fixed costs over more shares, qualify for discounts in advisory fees ("breakpoints"), and otherwise experience economies of scale, resulting in lower fees and expenses. They also state that multiple classes avoid the need to create "clone" funds, which require duplicative portfolio and fund management expenses. Furthermore, fund sponsors state that a larger asset base permits greater portfolio liquidity and diversification.")

Finally, the tax management of a Fund portfolio can have many elements. As a general matter, in-kind redemptions through the ETF Class could limit the realization of capital gains and reduce the unrealized capital gains for the portfolio generally, in which case cash redemption activity through the Mutual Fund Class might not generate capital gains on an ongoing basis for any of the classes. In addition, a Mutual Fund Class also may have the ability to engage in in-kind redemptions with large shareholders, which could minimize capital gains. The Mutual Fund Class may also provide cash inflows that could reduce the need to liquidate holdings to reposition the portfolio (as described in connection with transaction costs above) and thereby reduce capital gain realization that may otherwise occur on liquidation of holdings. A portfolio manager also may engage in careful tax management through portfolio transactions, and could generate capital losses in connection with some cash redemptions that could offset gains from other portfolio transactions. Such capital losses could be particularly useful in connection with actively managed investment companies, where the realization of some capital gains can be in connection with portfolio management activity rather than as a result of cash redemptions. Cash redemptions through a Mutual Fund Class therefore could allow for some tax loss harvesting and potentially generate tax offsets for capital gains that in-kind redemptions through an ETF Class would not.

In addition to the specific issues that the Commission raised in the Adopting Release relating to cash flows through a Mutual Fund Class, the Commission also noted in the Adopting Release that unlike the ETFs covered by Rule 6c-11, existing share class ETFs do not provide daily portfolio transparency.<sup>25</sup> Applicants note that a lack of daily portfolio transparency is not a necessary characteristic of investment companies that offer exchange-traded classes, and as such, Applicants will disclose each Fund's complete portfolio holdings on a daily basis in accordance with the requirements of Rule 6c-11. The Advisor believes that a Mutual Fund that currently discloses portfolio holdings on a delayed basis could offer an ETF Class and begin providing full daily portfolio transparency without any anticipated significant adverse consequences to shareholders.

As reflected above, the Advisor and the Board will be attentive to the Commission's concerns in the Adopting Release, and Applicants have proposed terms and conditions to the relief that will ensure that the Advisor and the Board focus on these issues on an initial and ongoing basis. These terms and conditions include a framework for initial reporting, ongoing monitoring, and ongoing reporting and Board oversight as described below. Applicants also will take appropriate Disclosure Steps (defined below) to ensure that investors clearly understand the differences between Mutual Fund Shares and ETF Shares. Accordingly, investors will be able to make an informed investment decision when investing in a Fund with Mutual Fund Classes and an ETF Class.

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<sup>25</sup> Adopting Release at footnote 433.

## V. REQUEST FOR EXEMPTIVE RELIEF

Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or any rule thereunder, if such relief is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Section 17(b) of the Act provides that the Commission will grant an exemption from the provisions of Section 17(a) of the Act if evidence establishes that the terms of the proposed transaction are reasonable and fair, including the consideration to be paid or received, and do not involve overreaching on the part of any person concerned, that the proposed transaction is consistent with the policy of each registered investment company concerned, and that the proposed transaction is consistent with the general purposes of the Act.

Applicants believe that the requested relief described in this Application meets these standards.

## VI. LEGAL ANALYSIS AND DISCUSSION

### a. **ETF Operational Relief**

With respect to the ETF Operational Relief, Applicants seek the same exemptive relief as provided by Rule 6c-11, generally subject to the same requirements contained in Rule 6c-11.<sup>26</sup> Applicants believe that they are unable to rely on Rule 6c-11 because “exchange-traded fund” is defined, in part, to mean a registered open-end management investment company “whose shares are listed on an Exchange and traded at market-determined prices.” Because this definition suggests that all of the investment company’s shares must be listed on an Exchange, a Multi-Class ETF Fund with Mutual Fund Shares in addition to ETF Shares would not meet this definition.

In addition, the Multi-Class ETF Funds may offer an “**Exchange Privilege**” that would permit shareholders in a Mutual Fund Class to exchange Mutual Fund Shares for ETF Shares. The Exchange Privilege would not permit shareholders of ETF Shares to exchange such shares for Mutual Fund Shares, except in situations where the ETF Class is terminated or where the Multi-Class ETF Fund merges into a Fund with no ETF Class. Any exchange pursuant to the Exchange Privilege will conform to the requirements of Section 11(a) of the Act. In particular, any exchange would occur at the relative NAVs of the respective share classes. To the extent a

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<sup>26</sup> Applicants note that the requirements of Rule 6c-11 include the condition that the portfolio holdings that form the basis for the ETF’s next calculation of current NAV per share must be the ETF’s portfolio holdings as of the close of business on the prior business day. As a result, a Multi-Class ETF Fund would not include changes in portfolio holdings in the next calculation of current NAV on a T+0 basis.

Multi-Class ETF Fund imposes any administrative fee on the exchange, the fee will be applied in compliance with Rule 11a-3 under the Act. A Multi-Class ETF Fund will impose restrictions on exchanges around the dates of dividend payments if necessary to prevent a shareholder from collecting a dividend from both the Mutual Fund Class and the ETF Class as a result of an exchange of shares. ETF Shares issued to a shareholder as part of the Exchange Privilege will be newly issued ETF Shares, and not ETF Shares purchased in the secondary market. The issuance of ETF Shares in connection with the Exchange Privilege will comply with the Securities Act. Because the definition of “exchange-traded fund” in Rule 6c-11 requires that the ETF “issues (and redeems) creation units to (and from) authorized participants in exchange for a basket and a cash balancing amount if any,” a Multi-Class ETF Fund that permits a shareholder of Mutual Fund Shares to acquire individual ETF Shares directly from the Multi-Class ETF Fund through the Exchange Privilege may not satisfy this definition. Although Applicants otherwise would comply with Rule 6c-11 as required by condition 1 below, because the Multi-Class ETF Funds cannot rely on Rule 6c-11, Applicants request the ETF Operational Relief described below.

### **1. Sections 2(a)(32) and 5(a)(1) of the Act**

Section 5(a)(1) of the Act defines an “open-end company” as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer’s current net assets, or the cash equivalent.

Because ETF shares are not individually redeemable, a possible question arises as to whether the definitional requirements of a “redeemable security” or an “open-end company” under the Act are met. Rule 6c-11(b)(1) resolves this issue for exchange-traded funds relying on Rule 6c-11 by specifically providing that an exchange-traded fund share is considered a redeemable security within the meaning of Section 2(a)(32). Because the operations of an ETF Class would adhere to all of the requirements of Rule 6c-11, except that, as described in Section VI.a. above, a Multi-Class ETF Fund will list only one class of its shares on an Exchange and also may offer an Exchange Privilege, Applicants request an Order under Section 6(c) granting an exemption from Section 2(a)(32) so that ETF Shares also are considered redeemable securities and from Section 5(a)(1) to permit a Multi-Class ETF Fund to register or remain registered as an open-end management investment company and redeem ETF Shares in Creation Units only.<sup>27</sup>

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<sup>27</sup> In light of the relief requested from Section 2(a)(32) and the fact that Mutual Fund Shares are individually redeemable, Applicants note that Multi-Class ETF Funds would meet the definition of an “open-end company” contained in Section 5(a)(1) of the Act. However, out of an abundance of caution, Applicants are seeking relief from Section 5(a)(1) to clarify that a Fund with an ETF Class is an open-end investment company.

## **2. Section 22(d) of the Act and Rule 22c-1 under the Act**

Section 22(d) of the Act, among other things, prohibits investment companies, their principal underwriters, and dealers from selling a redeemable security to the public except at a current public offering price described in the prospectus. Rule 22c-1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV.

Because investors may purchase and sell individual ETF shares from and to dealers on the secondary market at market-determined prices (*i.e.*, at prices other than those described in the prospectus or based on NAV), Rule 6c-11 provides exemptions from these provisions. As noted, the operations of an ETF Class, including the ways in which the ETF Shares trade at market-determined prices, would be the same as for ETFs relying on Rule 6c-11. Accordingly, Applicants seek the same relief pursuant to Section 6(c) as provided by Rule 6c-11.

## **3. Section 22(e) of the Act**

Section 22(e) generally prohibits a registered open-end management investment company from postponing the date of satisfaction of redemption requests for more than seven days after the tender of a security for redemption.

Rule 6c-11 provides an exemption from Section 22(e) to permit an ETF to delay satisfaction of a redemption request for more than seven days if a local market holiday, or series of consecutive holidays, or the extended delivery cycles for transferring foreign investments to redeeming Authorized Participants, or the combination thereof, prevents timely delivery of the foreign investment included in the ETF's Basket. Pursuant to Section 6(c), Applicants seek the same relief for an ETF Class, subject to the requirements of Rule 6c-11.

## **4. Sections 17(a)(1) and 17(a)(2) of the Act**

Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such person, from knowingly selling any security or other property to or purchasing any security or other property from the company.

Rule 6c-11 provides an exemption from these provisions to permit purchases and redemptions of Creation Units through Basket transactions between exchange-traded funds and certain types of affiliated persons as described in Rule 6c-11. Applicants seek an exemption from Sections 17(a)(1) and 17(a)(2) of the Act pursuant to Sections 6(c) and 17(b) of the Act to permit the Multi-Class ETF Funds to engage in the same types of Basket transactions through the ETF Class, subject to the requirements of Rule 6c-11.

## **b. ETF Class Relief**

In addition to the ETF Operational Relief that parallels the exemptive relief provided by Rule 6c-11, Applicants request an order under Section 6(c) for relief from Sections 18(f)(1) and 18(i) of the Act in order for a Fund to offer an ETF Class and one or more Mutual Fund Classes.

### **1. Section 18 of the Act and Rule 18f-3 under the Act**

Section 18(f)(1) of the Act provides that “it shall be unlawful for any registered open-end investment company to issue any class of senior security or to sell any senior security of which it is the issuer” with exceptions not here relevant. The term “senior security” is defined in Section 18(g) to mean “any stock of a class having priority over any other class as to distribution of assets or payment of dividends,” Section 18(i) provides that every share of stock issued by an open-end investment company “shall be a voting stock and have equal voting rights with every other outstanding voting stock.”

Section 18(f)(1) was enacted to protect investors from abuses associated with complex investment company capital structures, including excessive leverage, conflicts of interest among classes, and investor confusion, while Section 18(i) was intended to prevent inequitable and discriminatory shareholder voting provisions.<sup>28</sup> The Commission generally takes the position that an open-end investment company that issues multiple classes could raise issues under Sections 18(f)(1) and 18(i) because differences in the rights accorded to, or expenses paid by, different shareholders of the same investment company may raise senior security issues under Section 18.

In 1995, the Commission adopted Rule 18f-3, which provides an exemption from Sections 18(f)(1) and 18(i) for any open-end investment company (or series thereof) with a multi-class structure, provided that the company complies with the requirements of the rule.<sup>29</sup> Although Applicants will comply substantially with the requirements of Rule 18f-3, the Funds would not be able to comply with the requirement in Rule 18f-3(a)(4) that, aside from the differences permitted by the rule, the Mutual Fund Classes and the ETF Class will have the same rights and obligations.

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<sup>28</sup> See Exemption for Open-End Management Investment Companies Issuing Multiple Classes of Shares; Disclosure by Multiple Class and Master-Feeder Funds, Investment Company Act Release No. 19955 (Dec. 13, 1993) (proposing release) (citing Investment Trusts and Investment Companies: Hearings on S.3580 Before a Subcomm. of the Senate Comm. on Banking and Currency, 76th Cong., 3d Sess. 265-75, 1025-37 (1940)).

<sup>29</sup> See *supra* footnote 24.

Applicants have identified six ways in which Mutual Fund Shares and ETF Shares will have different rights. First, Mutual Fund Shares will be individually redeemable while ETF Shares generally will be redeemable only in Creation Units. Second, ETF Shares will be tradable on an Exchange while Mutual Fund Shares will not. Third, any Exchange Privilege generally will be limited to the Mutual Fund Class (*i.e.*, the Exchange Privilege will not be offered to holders of ETF Shares of the Multi-Class ETF Fund except in unusual situations as noted above). Fourth, dividends of Mutual Fund Shares may be automatically reinvested in additional Mutual Fund Shares issued by a Multi-Class ETF Fund at its NAV, while holders of ETF Shares may only participate in a dividend reinvestment plan to the extent their broker-dealers make available the DTC book-entry and/or broker-dealer sponsored dividend reinvestment service. Fifth, although all share classes of a Multi-Class ETF Fund will declare dividends on the same schedule (*e.g.*, monthly, quarterly, annually), it is currently expected that the dividend declaration date for Mutual Fund Shares will be the ex-dividend date, whereas due to Exchange requirements, the declaration date for ETF Shares is expected to be one business day before the ex-dividend date. Sixth, while all share classes of a Multi-Class ETF Fund will pay dividends on the same schedule (*e.g.*, monthly, quarterly, annually), the payment date for the Mutual Fund Shares is expected to be prior to the payment date for ETF Shares.

## 2. Addressing Policy Concerns under Section 18 and Rule 18f-3

Applicants do not believe that the differences in class rights noted above implicate the concerns at which Section 18 is directed — *i.e.*, excessive leverage, conflicts of interest, and investor confusion, but have proposed certain terms and conditions discussed below to address possible issues in this regard.

- A. **Leverage.** The issuance of classes of shares with different rights and obligations, and different dividend declaration and payable dates, does not create any opportunity for leverage.
- B. **Conflicts of Interest.** Rule 18f-3 contains provisions designed to minimize or eliminate potential conflicts between classes, such as requiring separate approval on any matter submitted to shareholders in which the interests of one class differ from the interests of any other class, and requiring the use of certain formulas for allocating income, gains and losses, and appreciation and depreciation. Under this framework, multi-class funds have successfully addressed conflicts of interest between classes and have become one of the prevalent types of registered investment companies in the asset management industry. The Multi-Class ETF Funds will comply with these voting and allocation provisions. For the reasons stated below and considering the representations and conditions discussed elsewhere in the Application, Applicants believe the requested relief, and the proposed representations and conditions, sufficiently protect against the potential conflicts of interest that are raised in a Multi-Class ETF Fund structure when classes have different redemption and trading rights, different timing of dividend declaration and payment dates, differences in the availability of a dividend reinvestment plan, and, in some cases, different exchange rights.

**(i) Potential conflicts of interest resulting from different classes declaring dividends on different days.**

Although Mutual Fund Shares and ETF Shares may both pay dividends, the dividend declaration date for Mutual Fund Shares is expected to be the ex-dividend date while the declaration date for ETF Shares is expected to be one business day before the ex-dividend date.<sup>30</sup> Applicants expect that the difference in the dates on which dividends of Multi-Class ETF Funds are declared for Mutual Fund Shares and ETF Shares will be due solely to Exchange rules applicable to ETFs, not to the intent of management to adopt specific measures that could be favorable to one class and prejudicial to another. Applicants note that there will not be an economic impact on a particular share class as a result of this difference in dividend declaration dates. The ex-dividend date will be the same for all classes of a Multi-Class ETF Fund, and the Multi-Class ETF Fund will adjust the NAV for all classes on the same day as a result of the dividends to be paid.

**(ii) Potential conflicts of interest resulting from different classes paying/reinvesting dividends on different days.**

Although Mutual Fund Shares and ETF Shares may both pay cash dividends, the cash payment date for Mutual Fund Shares is expected to be one or more business days before the cash payment date for ETF Shares. To avoid a potential conflict from the situation where the dividends to be paid to the ETF Class remain invested for the benefit of the entire Multi-Class ETF Fund, the cash held to pay dividends would be held in a custodial account and would not be invested outside of participation in cash sweep vehicles (including money market funds), custodial credit earning programs, or interest-bearing accounts. Applicants anticipate any earnings on such cash held to be negligible.

With respect to dividend reinvestment, shareholders in the Mutual Fund Class who wish to reinvest their dividends will be able to do so on the ex-dividend date and, in certain cases, may be able to reinvest the cash dividend automatically in additional Mutual Fund Shares. Shareholders in the ETF Class who wish to reinvest their dividends will generally not be able to reinvest their dividends until several days later, after the cash payments have been received by the ETF Class shareholders for reinvestment, and may reinvest such amounts automatically in additional ETF Shares only to the extent the broker-dealer through which an investor buys the ETF Shares offers an ETF dividend reinvestment program. The delay between the ex-dividend date and the payment/reinvestment date occurs for all ETFs, whether they are stand-alone ETFs or part of a multi-class structure, and regardless of whether an ETF shareholder elects to reinvest dividends.

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<sup>30</sup> The dividend rate for ETF Shares will be announced after market close on the ETF Class's declaration date, which is also the record date for the dividend for Mutual Fund Shares. Therefore, the dividend rate for ETF Shares will be announced after the deadline for receipt of an order to purchase Mutual Fund Shares to become a shareholder as of the Mutual Fund Class's record date.

As a result of the difference in when dividends are paid and received for reinvestment, Mutual Fund Class shareholders who reinvest dividends will be continuously invested, while ETF Class shareholders who reinvest will be “out of the market” for several days with respect to the amount of the dividend. This difference will affect the relative performance of the classes because, during the period when the dividend is out of the market, ETF Class shareholders will not receive income or experience appreciation or depreciation on the amount of the dividend. Applicants do not believe that this economic difference will be significant.

Applicants do not believe that this difference between Mutual Fund Classes and ETF Classes resulting from the different dividend payment schedules is inconsistent with the purposes underlying Section 18 of the Act for the following reasons:

- As noted above, Applicants do not believe the potential performance difference will be significant.
- Applicants do not believe that the potential performance difference will consistently favor one class over the other. Because share prices may move up or down, the payment delay experienced by ETF Class shareholders may help or hurt investment performance depending upon market conditions.
- Section 18 does not guarantee equality of performance among different classes of the same Multi-Class ETF Fund. Indeed, different classes will always have different performance as a result of the different expense ratios that apply to the classes. Typically, those performance differences are far greater than the performance differences that will result from different classes having different dividend payment dates.
- The use of different dividend payment dates is a necessary consequence of the fact that ETF Shares are exchange-traded while Mutual Fund Shares are not. The delay between the ex-dividend date and the payment date is an inherent feature of any ETF that investors currently must accept in order to obtain the other inherent features of the exchange-traded structure, such as intra-day trading.
- The delay between the ex-dividend date and the payment date cannot be avoided; it would exist whether an ETF was structured as a separate share class of a multi-class fund or as a stand-alone fund.

### **(iii) Potential inequitable voting power.**

As noted, Section 18(i) provides that “every share of stock . . . issued by a registered management investment company . . . shall be a voting stock and have equal voting rights with every other outstanding voting stock.” Because shareholders of each Multi-Class ETF Fund have voting rights based on the number of shares owned, and because the shareholders in the Mutual Fund Class may be able to reinvest dividends sooner than shareholders in the ETF Class, each Mutual Fund Class shareholder could obtain more voting power than an ETF Class shareholder in the days immediately following an ex-dividend date.

Applicants believe that their proposed treatment of voting rights meets the standards of Section 18(i) because every share issued by the Multi-Class ETF Funds will have equal voting rights in that each share will be entitled to one vote per share and a fractional vote per fractional share or, alternatively, one vote per each dollar of NAV (number of shares owned multiplied by the NAV per share) and a fractional vote per each dollar amount, in each case as described in the applicable Fund's organizational documents. While the voting power of a Mutual Fund Class shareholder arguably could be different due to the ability to reinvest dividends more quickly, voting power and voting rights are not necessarily the same thing. Even if one takes the position that the ETF Class and Mutual Fund Class(es) have different voting rights as a result of their different dividend policies, Applicants' proposal merits an exemption from Section 18(i) because, given the immaterial difference in voting power between these classes, it is extremely unlikely that the outcome of a proxy vote would ever be affected.

#### **(iv) Cross-Subsidization.**

As discussed above in section IV.C. of the Application, the Commission recently has expressed concern in the context of the Adopting Release that the cash flows associated with Mutual Fund Classes could impact a Multi-Class ETF Fund's portfolio, generating costs that shareholders of all classes, including the ETF Class, would share. This potential for "cross-subsidization" between the classes might be viewed as a potential conflict between the classes, and Applicants will consider it as such under the monitoring, evaluation, oversight and approval processes described in the Application. However, Applicants note as an initial matter that an inherent part of the mutual fund structure is the fact that some investors in the mutual fund will transact with the mutual fund more frequently than others, which may generate transaction costs and tax realizations that are experienced by all shareholders, including non-transacting shareholders. In this regard, the creation of an ETF Class could permit shareholders that wish to purchase and sell shares on a more frequent basis to do so through secondary market trading of ETF Shares rather than through purchases and redemptions of Mutual Fund Shares. Because such secondary market transactions would not impact the portfolio of a Multi-Class ETF Fund, the existence of the ETF Class could reduce transaction costs and adverse tax consequences for the Multi-Class ETF Fund as a general matter, a benefit that would be shared by all Multi-Class ETF Fund shareholders.

Applicants also note that the sharing of portfolio transaction costs and tax realizations at the portfolio level is a characteristic of all multi-class funds that operate under Rule 18f-3. For example, even though different classes may be offered to different types of investors that may have different levels of transaction activity or different transaction sizes (e.g., institutional investors, retail investors), Rule 18f-3 does not seek to isolate the portfolio transaction costs or any tax realizations caused by cash inflows and outflows to the specific class "responsible" for that transaction activity. Instead of seeking to allocate such costs, Rule 18f-3 requires that the Board, including a majority of the Independent Directors, determine that the multiple class plan for the Fund is in the best interests of each class individually and of the Fund as a whole.

Applicants generally propose to take the same approach with respect to a Fund that would offer Mutual Fund Classes and an ETF Class. However, in light of the Commission concerns, Applicants propose terms and conditions to the requested relief that will help ensure that the Advisor and the Board, including the Independent Directors, are keenly focused on these issues as an initial and ongoing matter. As noted above, Applicants believe that shareholders of both Mutual Fund Classes and an ETF Class of certain Funds would benefit from the Multi-Class ETF Fund structure. As addressed in the next section, Applicants also will take steps to inform and educate investors regarding the characteristics of the Multi-Class ETF Fund structure, including the potential that transactions through one class could generate portfolio transaction costs and tax consequences for shareholders in other classes.

**C. Investor Confusion.** With respect to the issue of investor confusion, Applicants intend to take numerous steps that Applicants believe will minimize or eliminate any potential for investor confusion. At the outset, Applicants believe the potential for confusion is limited. Applicants note that ETFs have been in existence for more than twenty-five years, and some ETFs are so popular that they consistently are among the highest volume securities on the Exchange on which they trade. As a general matter, it appears that investors are familiar with the concept of ETF shares and understand the fundamental differences between them and conventional mutual fund shares, regardless of whether the ETF shares are issued by ETFs or through ETF classes. As the Commission noted in the Adopting Release, “ETF investors have grown familiar with ETFs and the fundamental distinctions between ETFs and mutual funds,” and the Commission therefore determined that Rule 6c-11 did not need to include special disclosure requirements to highlight the ways in which mutual funds and ETFs differ.<sup>31</sup> Further, even though Rule 6c-11 does not include exemptive relief to permit ETF Classes, the Commission did consider the disclosure requirements that apply to ETF Classes at the time of the rulemaking, and its amendments to Form N-1A regarding ETF trading costs apply equally to ETFs and ETF Classes.<sup>32</sup> Applicants also believe that it is unlikely that any investor acquiring ETF Shares through the Exchange Privilege, if available, will do so without understanding the differences between the classes, since an investor would make an exchange only if the investor wanted to own shares with different characteristics.

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<sup>31</sup> Adopting Release at 116.

<sup>32</sup> Adopting Release at 124.

Notwithstanding the limited potential for confusion, Applicants will take numerous steps to ensure that investors clearly understand the structure of a Multi-Class ETF Fund and the differences between Mutual Fund Shares and ETF Shares (collectively, “**Disclosure Steps**”), including:

- Different products, different names. All references to the ETF Shares will use a generic term such as “ETF” in connection with such shares, or a form of trade name, as determined by the Advisor, indicating that the shares are exchange-traded, rather than the Fund name.
- Separate prospectuses. There will be separate prospectuses for a Multi-Class ETF Fund’s ETF Shares and Mutual Fund Shares.
- Prominent disclosure that the Multi-Class ETF Fund offers an ETF Class and one or more Mutual Fund Classes. Each Mutual Fund Class of a Multi-Class ETF Fund will prominently disclose in its prospectus and on its website that the Multi-Class ETF Fund offers an ETF Class, and each ETF Class of a Multi-Class ETF Fund will prominently disclose in its prospectus and on its website that it offers one or more Mutual Fund Classes.
- Prominent disclosure in the ETF Shares Prospectus. The cover and summary section of a Multi-Class ETF Fund’s ETF Shares prospectus will include disclosure that the ETF Shares are listed on an Exchange and are not individually redeemable.
- Disclosure about the Exchange Privilege in the Mutual Fund Shares Prospectus. To the extent Mutual Fund Shares may be converted into ETF Shares as part of an Exchange Privilege, a Multi-Class ETF Fund’s Mutual Fund Shares prospectus will contain appropriate disclosure about the ETF Shares and the Exchange Privilege.
- No reference to ETF Shares as a mutual fund investment. The ETF Shares will not be marketed as a mutual fund investment. Marketing materials may refer to ETF Shares as an interest in an investment company or Multi-Class ETF Fund, but will not make reference to a “mutual fund” except to compare or contrast the ETF Shares with Mutual Fund Shares. Where appropriate, there may be express disclosure that ETF Shares are not a mutual fund product.
- Disclosure regarding dividends. The prospectus for each Multi-Class ETF Fund’s ETF Shares will disclose, to the extent applicable, that shareholders of ETF Shares will generally receive cash dividend payments later than shareholders of Mutual Fund Shares and may reinvest such cash automatically in additional ETF Shares only if the broker through whom the investor purchased shares makes such option available.
- Educational material. The Advisor will provide plain English disclosure on its website about ETF Shares and how they differ from Mutual Fund Shares.

- Disclosure of relief and risks. For each Multi-Class ETF Fund, the prospectus(es) for each of the Mutual Fund Class(es) and the prospectus for the ETF Class will: include appropriate disclosure in its registration statement regarding the multi-class structure, the key characteristics of, and any risks associated with, the multi-class structure, including the potential that transactions through one class could generate portfolio transaction costs and tax consequences for shareholders in other classes; and disclose the existence, substance and effect of any order granted pursuant to the Application.

Applicants believe that the efforts outlined above will ensure that every interested investor will understand the differences between Mutual Fund Shares and ETF Shares. Investors therefore will be able to assess whether they wish to invest in the Multi-Class ETF Fund, and through which type of class.

### c. Precedent

As noted above, the Commission has granted the requested relief on four previous occasions.<sup>33</sup> Although Applicants seek the same relief, Applicants have proposed different conditions to the relief that reflect the adoption of Rule 6c-11 and that address the concerns expressed by the Commission in the Adopting Release relating to ETF Class Relief. Applicants believe that the Advisor and the Board will be well-positioned to determine whether it is appropriate for a given Fund to offer both Mutual Fund Classes and an ETF Class and to evaluate this structure on an initial and ongoing basis, as required by the conditions. In addition, one of the conditions would require each Multi-Class ETF Fund to make certain specific disclosures designed to help investors understand the Multi-Class ETF Fund structure and the potential conflicts of interest that may arise between an ETF Class and Mutual Fund Class(es).

## VII. CONDITIONS

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. A Multi-Class ETF Fund will operate an ETF Class as an “exchange-traded fund” in compliance with the requirements of Rule 6c-11 under the Act, except that a Multi-Class ETF Fund will list only one class of its shares on an Exchange and also may offer an Exchange Privilege, and will comply with the requirements of Form N-1A and reporting forms such as Form N-CEN applicable to exchange-traded funds that rely on Rule 6c-11.
2. A Multi-Class ETF Fund will comply with Rule 18f-3 under the Act, except to the extent that the ETF Class and Mutual Fund Class have different rights and obligations as described in the Application. As required by Rule 18f-3, before the first issuance of ETF Shares, and before any material amendment of a written plan under Rule 18f-3 to include an ETF Class,

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<sup>33</sup> See *supra* footnote 4.

a majority of the directors of a Fund, and a majority of the Independent Directors, shall find that the plan is in the best interests of each Mutual Fund Class and the ETF Class individually and of the Multi-Class ETF Fund as a whole.

3. To assist in the initial Board consideration of the appropriateness of operating a Multi-Class ETF Fund that has both an ETF Class and Mutual Fund Class(es), the Advisor shall prepare and deliver to the Board the Initial Advisor Report as described in the Application. The Initial Advisor Report will assist the Board in its finding pursuant to condition 2 and in evaluating the potential for any conflicts between the Mutual Fund Class(es) and the ETF Class based on current and historical information, as applicable.
4. The Advisor will recommend for the Board's approval the Ongoing Monitoring Process designed to help determine whether a Multi-Class ETF Fund has encountered any issues relating to the multi-class structure, including any conflicts between the Mutual Fund Class(es) and the ETF Class.
5. Each Multi-Class ETF Fund will be subject to an Ongoing Monitoring Process that is approved by the Board, and the Board of the Multi-Class ETF Fund periodically, but no less frequently than annually, will evaluate the multiple class plan of the Multi-Class ETF Fund. A majority of the directors of a Multi-Class ETF Fund, and a majority of the Independent Directors, shall find that the multiple class plan continues to be in the best interests of each Mutual Fund Class and the ETF Class individually and of the Multi-Class ETF Fund as a whole.
6. To inform this periodic evaluation, the Advisor shall prepare and deliver to the Board of the Multi-Class ETF Fund the Ongoing Advisor Report as described in the Application. The Board will consider whether the Ongoing Advisor Report suggests any issues relating to the multi-class structure, including conflicts between the Mutual Fund Class(es) and the ETF Class, that require additional Board action.
7. Each Multi-Class ETF Fund will take the Disclosure Steps outlined in the Application.
8. In addition to complying with Rule 6c-11(d) under the Act, each Multi-Class ETF Fund will preserve for a period not less than six years, the first two in an easily accessible place, (i) any documents created pursuant to the requirements in conditions 2, 3, 5, and 6; and (ii) any documents created pursuant to the Ongoing Monitoring Process that evidence a Multi-Class ETF Fund has exceeded or not exceeded an established threshold, as well as any documents provided to the Board as part of the Ongoing Monitoring Process.

9. The requested ETF Operational Relief and ETF Class Relief to operate one or more Multi-Class ETF Funds will expire on the compliance date (or such other date established by the Commission) of any Commission rule under the Act that provides relief permitting the operation of a Multi-Class ETF Fund structure.

## **VIII. PROCEDURAL MATTERS**

All of the requirements for execution and filing of this Application on behalf of Applicants have been complied with in accordance with the applicable organizational documents of Applicants, and the undersigned officers of Applicants are fully authorized to execute this Application. The authorizations of Applicants, including the resolutions of Applicants authorizing the filing of this Application, required by Rule 0-2(c) under the Act are included as Exhibits A-1 through A-3 to this Application. The verifications required by Rule 0-2(d) under the Act are included as Exhibits B-1 through B-2 to this Application.

Pursuant to Rule 0-2(f) under the Act, Applicants state that their address is [Street Address], [City, State] [Zipcode] and that all written communications regarding this Application should be directed to the individuals and addresses indicated on the first page of this Application.

Applicants desire that the Commission issue the requested order pursuant to Rule 0-5 under the Act without conducting a hearing.

## **IX. CONCLUSION**

For the foregoing reasons, Applicants respectfully request that the Commission issue an order under Sections 6(c) and 17(b) of the Act granting the relief requested in the Application. Applicants submit that the requested exemptions are necessary or appropriate in the public interest, consistent with the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the Act. In addition, Applicants submit that the terms of the proposed transactions are reasonable and fair, including the consideration to be paid or received, and do not involve overreaching on the part of any person concerned, that the proposed transactions are consistent with the policy of each registered investment company concerned, and that the proposed transactions are consistent with the general purposes of the Act.

Applicants have caused this Application to be duly signed on their behalf on [Date].

**YOUR MUTUAL FUND COMPANY**

By: \_\_\_\_\_  
Name:  
Title:

**YOUR ETF TRUST**

By: \_\_\_\_\_  
Name:  
Title:

**YOUR ADVISOR LLC**

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBITS TO APPLICATION**

The following materials are made a part of the Application and are attached hereto:

<b>Designation</b>	<b>Document</b>
Exhibits A-1 through A-3	Authorizations
Exhibits B-1 through B-2	Verifications

**Exhibit A-1****AUTHORIZATION****YOUR MUTUAL FUND COMPANY**

I, [Name], do hereby certify that I am the [Title] of Your Mutual Fund Company ("MF Company"). I further certify that the following resolutions were duly adopted by the directors of MF Company and that such resolutions have not been revoked, modified, rescinded, or amended and are in full force and effect:

RESOLVED, that the officers of MF Company be, and they hereby are, authorized to prepare or cause to be prepared, execute, and file with the SEC, an application, and any amendments thereto (the "Exemptive Application"), for an order pursuant to Sections 6(c) and 17(b) of the Act, exempting MF Company from certain provisions of the Act as described in the Exemptive Application, to permit certain existing and future series of MF Company (and affiliated investment companies) to offer classes of exchange-traded shares in addition to classes of mutual fund shares; and

FURTHER RESOLVED, that the officers of MF Company be, and they hereby are, authorized to take any and all actions that each of them, in his or her sole discretion, deems necessary and appropriate to carry out the intent and accomplish the purpose of the foregoing resolution.

IN WITNESS WHEREOF, I have hereunder subscribed my name to this Certificate as of this [Date].

By:

\_\_\_\_\_  
Name:

Title:

**Exhibit A-2****AUTHORIZATION****YOUR ETF TRUST**

I, [Name], do hereby certify that I am the [Title] of Your ETF Trust ("ETF Trust"). I further certify that the following resolutions were duly adopted by the trustees of the ETF Trust and that such resolutions have not been revoked, modified, rescinded, or amended and are in full force and effect:

RESOLVED, that the officers of ETF Trust be, and they hereby are, authorized to prepare or cause to be prepared, execute, and file with the SEC, an application, and any amendments thereto (the "Exemptive Application"), for an order pursuant to Sections 6(c) and 17(b) of the Act, exempting ETF Trust from certain provisions of the Act as described in the Exemptive Application, to permit certain existing and future series of ETF Trust (and affiliated investment companies) to offer classes of exchange-traded shares in addition to classes of mutual fund shares; and

FURTHER RESOLVED, that the officers of ETF Trust be, and they hereby are, authorized to take any and all actions that each of them, in his or her sole discretion, deems necessary and appropriate to carry out the intent and accomplish the purpose of the foregoing resolution.

IN WITNESS WHEREOF, I have hereunder subscribed my name to this Certificate as of this [Date].

By:

\_\_\_\_\_  
Name:

Title:

**Exhibit A-3****AUTHORIZATION****YOUR ADVISOR LLC**

I, [Name], do hereby certify that I am the [Title] of Your Advisor LLC ("Advisor"). I further certify that the following resolutions were duly adopted under appropriate authority on behalf of the Advisor and that such resolutions have not been revoked, modified, rescinded, or amended and are in full force and effect:

RESOLVED, that the officers of the Advisor be, and each of them hereby is, authorized and instructed to prepare, or to cause to be prepared, and to execute and file with the SEC, in consultation with counsel, an application, and any amendments thereto, for an order pursuant to Sections 6(c) and 17(b) of the Investment Company Act of 1940 ("Act") granting exemptions from certain provisions of the Act to permit open-end investment companies registered under the Act and advised by the Advisor (or its affiliates) to offer classes of exchange-traded shares in addition to classes of mutual fund shares; and

FURTHER RESOLVED, that the officers of the Advisor be, and each of them hereby is, authorized and instructed to take any and all actions that each of them, in his or her sole discretion, deems necessary and appropriate to carry out the intent and accomplish the purpose of the foregoing resolution.

IN WITNESS WHEREOF, I have hereunder subscribed my name to this Certificate as of this [Date].

By:

\_\_\_\_\_  
Name:

Title:

**Exhibit B-1**

**VERIFICATION**

The undersigned states that [he/she] has duly executed the attached application for exemption dated [Date], for and on behalf of Your Mutual Fund Company, that [he/she] is the [Title] of Your Mutual Fund Company, and that all actions by stockholders, directors and other bodies necessary to authorize the undersigned to execute and file such instrument have been taken. The undersigned further says that [he/she] is familiar with such instrument, and the contents thereof, and that the facts therein set forth are true to the best of [his/her] knowledge, information and belief.

**Your Mutual Fund Company**

By: \_\_\_\_\_  
Name:  
Title:

**Exhibit B-2****VERIFICATION**

The undersigned states that [he/she] has duly executed the attached application for exemption dated [Date], for and on behalf of Your ETF Trust, that [he/she] is the [Title] of Your ETF Trust, and that all actions by stockholders, directors and other bodies necessary to authorize the undersigned to execute and file such instrument have been taken. The undersigned further says that [he/she] is familiar with such instrument, and the contents thereof, and that the facts therein set forth are true to the best of [his/her] knowledge, information and belief.

**Your ETF Trust**

By: \_\_\_\_\_

Name:

Title:

**Exhibit B-3**

**VERIFICATION**

The undersigned states that [he/she] has duly executed the attached application for exemption dated [Date], for and on behalf of Your Advisor LLC, that [he/she] is the [Title] of Your Advisor LLC, and that all actions by stockholders, directors and other bodies necessary to authorize the undersigned to execute and file such instrument have been taken. The undersigned further says that [he/she] is familiar with such instrument, and the contents thereof, and that the facts therein set forth are true to the best of [his/her] knowledge, information and belief.

**Your Advisor LLC**

By: \_\_\_\_\_  
Name:  
Title:

Prior to the adoption of the ETF Rule, it was unclear whether a traditional registered open-end investment company (i.e., a mutual fund) could convert into an ETF due to certain language in the exemptive relief upon which ETFs were required to rely to operate. Such language suggested that ETFs could only offer and sell their shares in creation units and through authorized participants. Yet in any conversion (or reorganization) of a mutual fund into an ETF, no authorized participant can be involved if the transaction is to be done on a tax-free basis. Rather, the funds must deal with each other directly — with the mutual fund exchanging its assets and liabilities for shares of the ETF that are then distributed to its shareholders.

The text of the ETF Rule as adopted by the SEC made it clear that, for purposes of liquidations and reorganizations, an ETF was not required to transact solely with authorized participants. As a result, mutual funds for the first time gained the clear ability to convert (or reorganize) into ETFs.

The first conversion of a mutual fund into an ETF occurred in 2021. Since that time, there have been dozens — maybe even hundreds — of such conversions.

There are theoretically two ways for a mutual fund to “convert” into an ETF. First, a mutual fund’s board and shareholders could approve changes to the fund’s organizational documents that would result in the fund, among other things, ceasing to accept individual shares daily for redemption and ceasing to transact in fractional shares. Alternatively, a mutual fund could reorganize into an ETF shell subject to board and shareholder approval or, in certain cases, subject only to board approval. To date, the latter option has proven to be most popular as all conversions have been structured as shell reorganizations whereby a mutual fund has merged into a new series of an open-end investment company whose governance and disclosure permit its operation as an ETF.

Shell reorganizations, broadly, occur frequently in the fund industry. Thus, the shell reorganization mechanism is familiar to fund sponsors and counsel. When reorganizing a mutual fund into an ETF, however, there are a few unique considerations. For example:

- Given the shareholder base of the mutual fund, is converting it into an ETF appropriate, including as a legal and business matter? Consideration must be given to the percentage of existing shareholders that currently hold shares through a brokerage account and will continue to be able to hold shares of the ETF.
- Is converting the relevant mutual fund into an ETF appropriate, given that, as an ETF, the fund will be required to provide daily portfolio transparency?
- Does the mutual fund have multiple classes? If so, how and when will it consolidate its share classes? Is a contractual or voluntary fee waiver needed if consolidating shares into a higher fee share class? Will a share split be required?

- How will the fees for the ETF be structured?
  - Will the ETF maintain the same fee structure or will the ETF use a different fee structure, such as a unitary fee? If there will be a different fee structure, will it result in a higher advisory fee in any circumstance or any difference in the services provided to the ETF? If so, a shareholder vote may be required under Rule 17a-8(a)(3)(ii) under the 1940 Act.
  - Do any of the mutual fund share classes charge 12b-1 fees? If so, is a waiver of such 12b-1 fees necessary prior to the conversion? Can the ETF adopt a 12b-1 plan?
- Will the conversion require shareholder approval? Principally, this is a question of whether the mutual fund's governing documents require shareholder approval; or, alternatively, whether Rule 17a-8 under the 1940 Act requires shareholder approval due to a difference in the fundamental policies, advisory arrangements, or board of, or the distribution fees paid by, the mutual fund and ETF.

This chapter includes a basic checklist to complete a mutual fund to ETF conversion that occurs without a shareholder vote, followed by an explanation of and links to certain regulatory documents, which must be considered in connection with any successful conversion.

1. Checklist of mutual fund to ETF conversion.

<b>Task</b>
<b>Mutual Fund Board Actions</b>
<ul style="list-style-type: none"> <li>• Approve any consolidation of share classes or stock splits;</li> <li>• Approve plan of reorganization and make findings required by Rule 17a-8 under the 1940 Act;</li> <li>• Approve filing of Form N-14 registration statement and set record date, which will establish those shareholders to receive the Form N-14;</li> <li>• Approve closure of mutual fund to new investors on prior to conversion; and</li> <li>• Approve dissolution of mutual fund following the conversion.</li> </ul>
<b>ETF Board Actions</b>
<ul style="list-style-type: none"> <li>• Approve establishment and designation of the ETF;</li> <li>• Approve filing of Form N-1A registration statement for ETF;</li> <li>• Approve plan of reorganization and make findings required by Rule 17a-8 under the 1940 Act; and</li> <li>• Approve all contracts, agreements, and other organizational items for ETF.</li> </ul>
<b>Registration Statement Filings and Other Actions</b>
<ul style="list-style-type: none"> <li>• File Form N-1A registration statement for ETF (75 day filing);</li> <li>• File Form N-14 registration statement (30 day filing) and mail to shareholders as of record date once effective;</li> <li>• Prepare listing application for listing exchange;</li> <li>• Conduct any share class consolidations and share splits or dividend distributions prior to conversion;</li> <li>• Execute sole shareholder consent for ETF prior to conversion;</li> <li>• File Form 8-A to list ETF;</li> <li>• File any 497 or 497K filings for ETF; and</li> <li>• Prepare closing documents for conversion.</li> </ul>

## 2. Form N-14.

Form N-14 is the form used for the registration statement to register shares to be issued in the conversion.

Although the general requirements of Form N-14 have not been updated in many years, the financial information required to be included in Form N-14 has recently changed. In particular, Form N-14 has been revised to require the following:

The Statement of Additional Information must contain the financial statements, including the schedules thereto, and supplemental financial information of the acquiring company and the company to be acquired required by Regulation S-X for the periods specified in Article 3 and Rule 6-11 of Regulation S-X...

As a result of these changes, the requirement to include pro forma financial statements with one exception has been replaced by a requirement to include supplemental financial information in narrative form. Registrants may need to include a pro forma schedule of investments if the conversion will result in a material change in the portfolio due to investment restrictions. The full text of Form N-14 can be accessed at: <https://www.sec.gov/files/formn-14.pdf>. The full text of Regulation S-X can be accessed at: <https://www.ecfr.gov/current/title-17/part-210>.

## 3. North American Security Trust letter, dated 5 August 1994.

The North American Security Trust letter explains how to determine which fund, in a reorganization (or merger of two funds), is the accounting survivor for, among other things, performance purposes. The full text of the North American Security Trust letter can be accessed at: <https://www.sec.gov/divisions/investment/noaction/1994/north-american-security-trust-080594.pdf>.

Although legislators, regulators, and investors have continued to be interested in cryptocurrency and other digital assets, laws and regulations around digital assets have been slow to develop. While the SEC and its staff have issued guidance relating to cryptocurrency and digital assets, there has been a lack of clarity regarding, among other questions, whether certain such assets are “securities” and how such assets may be custodied. However, the winds shifted in 2025.

On 21 January 2025, the SEC, under Acting Chair Mark T. Uyeda, launched a crypto task force led by SEC Commissioner Hester Peirce dedicated to developing a comprehensive and clear regulatory framework for crypto assets. Additionally, the SEC staff recently issued guidance on an array of crypto-related regulatory issues, including whether all or certain “staked” digital assets are securities, the applicability of certain broker-dealer financial responsibility rules and transfer agent rules to crypto asset servicing activities and distributed ledger technology, the applicability of the federal securities laws to stablecoins and meme coins, and disclosure requirements applicable to exchange-traded products that provide exposure to digital assets (Recent Guidance). Moreover, and as discussed further below, the SEC has recently issued orders approving the use of in-kind creations and redemptions by ETPs and other matters.

Congress has also taken steps to clarify the legal framework applicable to digital assets. On 18 July 2025, the Guiding and Establishing National Innovation for U.S. Stablecoins Act (GENIUS Act) was signed into law, establishing a U.S. regulatory framework for the issuance of payment stablecoins. In addition, Congress is expected to adopt a market structure bill before the end of 2025 that will provide a regulatory framework for the digital asset ecosystem in the United States and settle the questions of whether, and to what extent, each of the SEC, the CFTC, and federal banking regulators have jurisdiction over, among other activities, offerings of and transactions in digital assets. In a sign of things to come, on 30 July 2025, the President’s Working Group on Digital Asset Markets released a report entitled “Strengthening American Leadership in Digital Financial Technology” including recommendations to United States’ financial regulators regarding the steps necessary to position the United States as the world leader in digital asset technology.

The full text of the report can be found at: <https://www.whitehouse.gov/wp-content/uploads/2025/07/Digital-Assets-Report-EO14178.pdf>. Recognizing that there is more to come from Congress, the Department of Treasury, the banking regulators, the SEC, and the CFTC that will significantly influence the United States’ ultimate approach to digital assets, this Fourth Edition of the ETF Handbook seeks to summarize the current regulatory posture of the SEC and its staff with respect to ETPs having direct or “spot” exposures to crypto assets and ETFs that obtain exposure to crypto assets by investing in futures contracts thereon, including the Recent Guidance from the SEC staff.

With respect to ETPs offering spot exposures to crypto assets, it is important to understand that they have not been permitted to register under the 1940 Act as investment companies because they do not invest predominantly (if at all) in securities; and, generally speaking, the 1940 Act is designed to cover pools that

do invest in securities. Like ETFs registered under the 1940 Act, however, spot crypto ETPs have been able to register shares under the Securities Act and the Exchange Act and list such shares for public trading on a stock exchange. Indeed, as of the date of publication of this Handbook, ETPs holding Bitcoin and Ethereum have been approved by the SEC, listed and are actively trading, and ETPs holding Cardano (ADA) and Solana (SOL) are expected soon. In addition, there are several ETFs that provide exposure to Bitcoin and Ethereum by investing in exchange-traded futures contracts thereon.

These innovations in the asset management industry have been hard won. For many years, the SEC rejected proposed listing rules from the primary ETF stock exchanges, specifically Nasdaq, Cboe, and NYSE Arca (together, the Exchanges), to list spot crypto ETPs largely for two reasons:

- The Exchanges did not have surveillance sharing agreements (*i.e.*, an agreement between a commodity exchange operator and a self-regulatory organization that oversees that commodity exchange operator to share information about market trading activity, clearing activity, and customer identity) with significant markets that host trading in the relevant crypto assets; and
- The underlying markets for the crypto assets were not regulated, or not regulated in a manner comparable to a national securities or futures exchange.

In essence, in the SEC's view, cryptocurrency pricing was unreliable, opaque, and susceptible to manipulation. As a result, the SEC concluded that the pricing of the proposed ETPs may also be unreliable, opaque, and susceptible to manipulation and create a risk of investor harm. Accordingly, the SEC declined to approve proposed listing standards for the ETPs.

The full text of the SEC's denial with respect to the first proposed listing rule can be accessed at: <https://www.gpo.gov/fdsys/pkg/FR-2018-08-01/pdf/2018-16427.pdf>.

In August 2023, however, the US Court of Appeals for the D.C. Circuit ruled in *Grayscale Investments, LLC v. SEC* that the SEC was "arbitrary and capricious" in its decision to reject an application by an exchange to list shares of the Grayscale Bitcoin Trust. Although the SEC could have appealed the ruling, instead it engaged with the sponsors of various spot-proposed Bitcoin ETPs to develop mutually acceptable parameters for such a listing.

#### **a. Approval of Single Coin ETPs**

In January 2024, the SEC approved the listing of 11 Bitcoin-based ETPs on one of the major stock exchanges and subsequently declared the registration statements for each effective. The 11 ETPs approved were: (i) the Grayscale Bitcoin Trust; (ii) the Bitwise Bitcoin ETF; (iii) the Hashdex Bitcoin ETF; (iv) the iShares Bitcoin Trust; (v) the Valkyrie Bitcoin Fund; (vi) the ARK 21Shares Bitcoin ETF; (vii) the Invesco Galaxy Bitcoin ETF; (viii) the VanEck Bitcoin Trust; (ix) the WisdomTree Bitcoin Fund; (x) the Fidelity Wise Origin Bitcoin Fund; and (xi) the Franklin Bitcoin ETF.

In approving the proposed listing standards (Proposals), the SEC staff relied, in part, on confirmation from the Exchanges that: (i) the Proposals were consistent with Section 6(b)(5) of the Exchange Act, which requires that the securities exchanges' rules be designed to "prevent fraudulent and manipulative acts and practices" and, "in general, to protect investors and the public interest" (the Anti-Fraud Rule); and (ii) the Proposals were consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act, which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities (the Information Rule).

The full text of the order granting accelerated approval of the proposed rule changes can be accessed at: <https://www.govinfo.gov/content/pkg/FR-2024-01-17/pdf/2024-00743.pdf>.

With respect to the Anti-Fraud Rule, the SEC staff has long allowed an exchange to meet its fraud and manipulation prevention obligations under Section 6(b)(5) by having a comprehensive surveillance-sharing agreement with a regulated market of significant size trading the underlying assets. In the case of Bitcoin, the SEC staff declined to regard the Chicago Mercantile Exchange (CME) as "a regulated market of significant size trading the underlying assets" because spot Bitcoin does not trade on the CME; only Bitcoin futures trade on the CME. Accordingly, the SEC worried that any manipulation in the spot Bitcoin market would only be surveilled by the CME to the extent that it also impacted the CME Bitcoin futures market, and the correlation between the markets was unclear. Ultimately, however, in determining to approve the listing of the 11 Bitcoin-based ETPs in 2024, the SEC staff conducted a correlation analysis between the spot Bitcoin market and the CME Bitcoin futures market and determined that the CME Bitcoin futures prices are highly correlated with the prices of spot Bitcoin. This correlation supported a determination that fraud or market manipulation in one market would impact prices in both markets. Therefore, a comprehensive surveillance-sharing agreement with the CME could be used to fulfill the Exchanges' obligations under Section 6(b)(5).

With respect to the Information Rule, the SEC staff found that each Proposal set forth aspects of the proposed ETP, including the availability of pricing information, transparency of portfolio holdings, and types of surveillance procedures, that were consistent with other spot commodity ETPs that the SEC staff had approved. They included commitments regarding: the availability of quotation and last-sale information for the ETP's shares; the availability on the ETP's website of certain information related to the its intra-day indicative values (IIVs) and net asset values; the dissemination of IIVs by one or more major market data vendors, updated every 15 seconds throughout the securities exchange's regular trading hours; the identification of specific service providers, including custodians; the securities exchange's surveillance procedures and ability to obtain information regarding trading in the ETP's shares; the conditions under which the securities exchange would implement trading halts and suspensions; and the requirements of registered market makers in the shares of each ETP. Among the conditions included in the approval of the Proposals was a commitment by the issuers of the ETPs that the

ETPs would not engage in in-kind creations and redemptions with market makers and authorized participants (APs); instead, the ETPs committed to cash creations and redemptions.

However, in a significant development for these ETPs, on 29 July 2025, the SEC announced the approval of 16 proposals from the Exchanges to listing standards in order to allow for in-kind creations and redemptions by APs for crypto asset ETPs. The staff of the SEC granted approval on an accelerated basis to permit the trading and listing of shares of Bitcoin- and Ether-based ETPs that could engage in creation or redemptions of shares in an in-kind transaction of spot Bitcoin or spot Ether, as applicable. According to the order, the staff found that the Exchanges' rule change proposals were consistent with the anti-fraud and investor protection requirements of Section 6(b)(5) of the Exchange Act, citing flexibility and potential tax efficiencies for market participants, as well as that the ETPs will continue to comply with the other applicable listing standards of their respective Exchange.

The full text of the order can be accessed at: <https://www.sec.gov/files/rules/sro/nasdaq/2025/34-103571oyioi.pdf>.

#### **b. Futures-Based ETFs**

Prior to the approval of spot-Bitcoin ETPs, 1940 Act-registered ETFs that sought to obtain Bitcoin exposures by investing in Bitcoin-related futures contracts, which are regulated by the CFTC, faced regulatory challenges until October 2021, when the SEC staff did not prevent the registration and listing, under the ETF Rule and the generic listing standards, of the first ETFs engaging in a strategy of investing in Bitcoin-related futures contracts. Specifically, on 19 October 2021, the SEC permitted the listing of the ProShares Bitcoin Strategy ETF on a national securities exchange, and shortly thereafter did the same for the CoinShares Valkyrie Bitcoin and Ether Strategy ETF and the VanEck Bitcoin Strategy ETF (which later liquidated in January 2024).

These Bitcoin futures-based ETFs are structured similarly to managed futures mutual funds and ETFs that invest in futures contracts. They typically hold approximately 75% of their assets in fixed-income securities or cash and money market type instruments and up to 25% of their assets in the shares of a wholly owned subsidiary treated as a controlled foreign corporation for U.S. federal income tax purposes (CFC).<sup>1</sup> The CFC invests solely in exchange-traded futures contracts—in this case, Bitcoin futures contracts traded on the CME. The standardized approach

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<sup>1</sup> The limit of 25% of assets in the CFC allows the ETF to comply with tax transparency afforded to regulated investment companies (RICs) under subchapter M of the Internal Revenue Code. For purposes of the 1940 Act, both the fixed income securities and the shares of the CFC are “securities.” As a result, the ETF is subject to 1940 Act regulation, even though the economic return from the ultimate Bitcoin exposure, particularly in a low-interest rate environment, is likely to outweigh the fixed-income return, perhaps by large multiples.

represented by these ETPs, including their typical ability to rely on the ETF Rule, was a key consideration in the SEC's allowing them to list in reliance on the generic listing standards available for ETPs that operate in reliance on the ETF Rule.

The full text of the related statement by SEC Chairman Gary Gensler can be accessed at: <https://www.sec.gov/news/public-statement/gensler-aspen-security-forum-2021-08-03>.

### c. Multi-Crypto Asset ETPs

The staff of the SEC initially approved the listing and trading of ETPs that hold more than one crypto asset on 30 December 2024, with the approval of the Franklin Crypto Index ETF and the Hashdex Nasdaq Crypto Index US ETF. Each of those ETPs hold both spot Bitcoin and spot Ether, the proportions of which are based on the assets' free-float market capitalizations. In that December 2024 order, the SEC staff noted that, like in the analysis for the approval of single-crypto asset ETPs, the high correlation between the spot Bitcoin and the CME Bitcoin futures market, as well as the spot Ether market and the CME Ether futures market, meant that CME could be "reasonably expected" to assist in the surveillance for fraud and manipulation. Therefore, the staff of the SEC found that the proposals for the Franklin Crypto Index ETF and the Hashdex Nasdaq Crypto Index US ETF were consistent with the requirements under Section 6(b)(5) of the Exchange Act.

The full text of the order granting approval to the Franklin Crypto Index ETF and the Hashdex Nasdaq Crypto Index US ETF can be accessed at: <https://www.govinfo.gov/content/pkg/FR-2024-12-30/pdf/2024-30911.pdf>.

On 29 July 2025, the staff of the SEC also granted approval to NYSE Arca to list and trade shares of the Bitwise Bitcoin and Ethereum ETF, a multi-crypto asset ETP that will hold a mix of spot Bitcoin, spot Ether and cash. As in the case of the Franklin and Hashdex ETPs, the spot Bitcoin and spot Ether held by the Bitwise ETP are weighted according to their relative market capitalizations; and in approving the Bitwise ETP, the SEC staff characterized it as "substantially similar" to that of the Franklin Crypto Index ETF and the Hashdex Nasdaq Crypto Index US ETF. SEC staff further noted that the availability of pricing information, transparency of portfolio holdings, and types of surveillance procedures contributed to the staff's finding that NYSE Arca's rule change proposal to list and trade shares of the ETP was consistent with the investor-protection and anti-fraud requirements under Section 6(b)(5) of the Exchange Act.

The full text of the order granting approval to the Bitwise Bitcoin and Ethereum ETF can be accessed here: <https://www.sec.gov/files/rules/sro/nysearca/2025/34-103570qewre.pdf>.

Prior to the approvals on 29 July 2025, on 25 July 2025, the SEC staff approved a listing standard for the Bitwise 10 Crypto Index ETF under delegated authority. According to the registration statement for this ETP, it invests, in addition to Bitcoin and Ethereum, in other crypto assets, such as XRP. In support of the listing application, the ETP's sponsor argued that the use by the ETP of certain reference

prices provided by its valuation vendor to value the ETP's holdings and to determine its NAV and IIV in tandem with the ETP's cash create and redeem structure represented a novel means to prevent fraud and manipulation from impacting the price of the ETP's shares. The sponsor also claimed that the ETP will offer protections beyond those that exist in traditional commodity markets and consistent with those that exist in equity markets. The staff's approval in this case was the first for a multi-crypto asset product beyond Bitcoin and Ether.

However, the staff's approval was stayed by the SEC on the same day that it was issued. Then, on 1 August 2025, the staff issued an additional order to solicit statements in support of, or in opposition to, the rule change to the list and trade shares of the Bitwise 10 Crypto Index ETF. Such statements are due by 22 August 2025. Given the stay and further review by the SEC or staff, it is unclear when a final decision will be made.

The full text of the order granting initial approval of the Bitwise 10 Crypto Index ETF can be accessed at: <https://www.federalregister.gov/documents/2025/07/25/2025-14036/self-regulatory-organizations-nyse-arca-inc-order-granting-accelerated-approval-of-a-proposed-rule>.

The full text of the letter staying the order can be accessed at: [sr-nysearca-2024-98-rule-431-letter-2025-07-22.pdf](https://www.sec.gov/section-1065/sr-nysearca-2024-98-rule-431-letter-2025-07-22.pdf).

The full text granting the order scheduling filing of statements on review can be accessed at: <https://www.govinfo.gov/content/pkg/FR-2025-08-01/pdf/2025-14548.pdf>.

#### **d. Additional Applicable SEC Guidance**

##### **i. Statement on Broker-Dealer Custody of Digital Asset Securities**

In May 2025, the SEC's Division of Trading and Markets and FINRA's Office of General Counsel withdrew their previous joint guidance regarding broker-dealer custody of digital asset securities. At the same time, the SEC's Division of Trading and Markets released frequently asked questions (FAQs) clarifying how certain broker-dealer and transfer agency rules relate to crypto asset activities. The FAQs address that, among other things, in the context of spot crypto ETPs, the possession and control requirements in Rule 15c3-3 under the Exchange Act are not triggered if nonsecurity crypto assets are held for customers, but broker-dealers taking proprietary positions in the assets underlying an ETP must account for them as part of their net capital calculations. The staff also expressed that it would "not object" if broker-dealers were to treat a proprietary position in Bitcoin or Ether as being readily marketable for purposes of determining whether the 20% haircut applicable to commodities applies. The FAQs also clarified that a broker-dealer can establish control of a crypto asset that is a security under Rule 15c3-3(c), even if it is not in certificated form, when held at an otherwise qualifying control location. Additionally, it expressed that, in its view, crypto assets that are investment contracts that are not the subject of a registration statement filed under the Securities Act are not treated as securities under the Securities Investor Protection Act of 1970 (and

are not protected by the Securities Investor Protection Corporation). Importantly, the FAQs clarify that a transfer agent may rely on blockchain technology to serve as the master security holder file so long as the transfer agent is able to comply with all applicable requirements under the federal securities laws in doing so.

The full text of the withdrawn joint guidance can be accessed here:

<https://www.sec.gov/newsroom/speeches-statements/joint-staff-statement-broker-dealer-custody-digital-asset-securities>. The full text of the FAQs can be accessed at: <https://www.sec.gov/rules-regulations/staff-guidance/trading-markets-frequently-asked-questions/frequently-asked-questions-relating-crypto-asset-activities-distributed-ledger-technology>.

## **ii. Staking Activities**

### **1. Statement on Certain Protocol Staking Activities**

On 29 May 2025, the SEC's Division of Corporation Finance articulated its view that Protocol Staking Activities (as defined below), do not involve the offer and sale of securities within the meaning of Section 2(a)(1) of the Securities Act or Section 3(a)(10) of the Exchange Act, and that participants in Protocol Staking Activities do not need to register with the SEC transactions under the Securities Act, or fall within one of the Securities Act's exemptions from registration in connection with these Protocol Staking Activities. "Protocol Staking Activities" include: (i) staking crypto assets that are intrinsically linked to the programmatic functioning of a public, permissionless network, and are used to participate in or earned for participating in such network's consensus mechanism or otherwise used to maintain or earned for maintaining the technological operation and security of such network on a proof-of-stake network; (ii) the activities undertaken by third parties involved in the protocol staking process; and (iii) providing ancillary services, including slashing coverage, early unbonding, alternate rewards payment schedules and amounts, and aggregation of covered crypto assets.

The full text of the statement can be accessed at: <https://www.sec.gov/newsroom/speeches-statements/statement-certain-protocol-staking-activities-052925>.

### **2. Statement on Certain Liquid Staking Activities and Receipt of Staking Receipt Tokens**

On 5 August 2025, the SEC's Division of Corporation Finance articulated its view that Liquid Staking Activities (as defined below), when done in connection with protocol staking, do not involve the offer and sale of securities within the meaning of Section 2(a)(1) of the Securities Act or Section 3(a)(10) of the Exchange Act, and that participants in Liquid Staking Activities do not need to register with the SEC transactions under the Securities Act, or fall within one of the Securities Act's exemptions from registration in connection with these protocol staking activities. "Liquid Staking Activities" under the statement refers to a type of protocol staking whereby owners of crypto assets deposit their crypto assets with a third-party protocol staking service provider (such owners, "Depositors") and in return receive

newly “minted” (or created) crypto assets (Staking Receipt Tokens) that evidence Depositors’ ownership of the deposited covered crypto assets and any rewards that accrue to the deposited crypto assets.

The full text of the statement can be accessed at: <https://www.sec.gov/newsroom/speeches-statements/corpfm-certain-liquid-staking-activities-080525>.

### iii. Crypto Asset Exchange-Traded Product Disclosures

On 1 July 2025, the SEC’s Division of Corporation Finance released a statement addressing its views about the application of certain disclosure requirements to crypto asset ETPs.

The statement provides examples of specific disclosure practices of ETPs with respect to the Regulations S-K and S-X disclosure requirements. While the statement does not make many specific recommendations, it includes the following observations regarding effective disclosure:

- In summary prospectuses, ETPs identified aspects of the offering that are the most significant and highlighted them in clear, plain language, avoiding repetition of the prospectus text. Disclosure included information about the ETPs’ investment objectives and tracking index or benchmark, policies regarding the management of the underlying crypto assets, and incidental rights associated with underlying crypto assets, including forks or airdrops.
- ETPs have disclosed information, including risk-related information, about the underlying crypto assets, associated networks, and net asset value calculation.
- Concerning service providers, ETPs identified APs, described material terms of AP agreements, disclosed, with respect to custodial arrangements, storage policies for and access to private keys, whether the ETPs’ crypto assets are commingled or held in wallets with assets of other customers, and how transfers of crypto assets from cold, warm, or hot storage occur;
- With respect to distribution, ETPs described the creation and redemption process, how creation and redemption orders are settled on-chain or off-chain, and the potential impact on the arbitrage mechanism from price volatility.
- ETPs have disclosed whether sponsors hold the underlying crypto assets or have related exposure creating conflicts of interest, and whether the ETPs have codes of conduct or other requirements for transactions in the underlying crypto assets.
- ETPs should avoid using overly technical terminology or jargon, and provided guidance regarding specific tags in the filing fee table.

The statement also includes information about ETPs' disclosure practices with respect to management and financial statements.

The full text of the statement can be accessed at: [https://www.sec.gov/newsroom/speeches-statements/cf-crypto-asset-exchange-traded-products-070125?utm\\_medium=email&utm\\_source=govdelivery](https://www.sec.gov/newsroom/speeches-statements/cf-crypto-asset-exchange-traded-products-070125?utm_medium=email&utm_source=govdelivery).

#### **iv. Statement on Meme Coins**

On 27 February 2025, the SEC's Division of Corporation Finance issued a statement clarifying its views that "meme coins" do not involve the offer and sale of securities under the federal securities laws. Thus, transactions in meme coins (as defined below) do not need to be registered with the SEC, but also that buyers and sellers are not protected by federal securities laws. Importantly, the Division of Corporation Finance limited this interpretation to meme coins that meet the following description:

- A type of crypto asset inspired by internet memes, characters, current events, or trends for which the promoter seeks to attract an "enthusiastic online community."
- Similar to collectibles, meme coins are typically purchased for entertainment, social interaction, and cultural purposes, and their value is driven primarily by market demand and speculation.
- Meme coins typically have "limited or no use or functionality."

The statement notes that because meme coins are speculative in nature, they tend to experience significant market price volatility and often are accompanied by statements regarding their risks and lack of utility.

Based on these descriptions, transactions in some of the most popular meme coins (e.g., Dogecoin, Shiba Inu, Pepe, as well as the Official Trump and Official Melania coins) may be beyond the SEC's jurisdiction.

Inherently, by virtue of being classified as non-securities by the SEC, meme coins will generally be categorized as "commodities," subject to the Commodity Exchange Act and the enforcement jurisdiction of the CFTC, and may potentially be held in ETPs as such.

The full text of the statement can be accessed at: <https://www.sec.gov/newsroom/speeches-statements/staff-statement-meme-coins>.

As with all registered funds, FINRA oversees the distribution through broker-dealers of ETFs and ETPs. In this role, FINRA has issued the following guidance and letters.

## A. FINRA Guidance

### ***1. FINRA Regulatory and Compliance Alert — Exchange-Traded Fund Performance — Fall 2001***

In this regulatory alert, FINRA provides guidance that, in any performance communication, ETFs must include standardized performance quoted in both net asset value (NAV) and closing market price. Any performance returns must be shown for standardized periods based on NAV with equally prominent disclosure of performance returns based on market closing price for those time periods. The guidance also requires disclosure of the basis for each set of performance figures (e.g., “these total returns are based on the closing market price of the ETF on date X”). The guidance further states that any performance communications from ETFs structured as open-end funds are subject to the standardized performance requirements of Rule 482 of Regulation C under the Securities Act. The full text of the alert can be accessed at: <https://www.finra.org/sites/default/files/RCA/p002372.pdf>.

### ***2. FINRA Reminds Members of Their Sales Practice Obligations for Complex Products and Options and Solicits Comment on Effective Practices and Rule Enhancements, dated 8 March 2022***

In this Notice to Members, FINRA raises concerns about investors trading in “complex products” without fully understanding their unique characteristics and risks. FINRA acknowledges that there is no standard definition of a “complex product,” but has described products such as leveraged and inverse ETPs, defined outcome ETFs, funds that use derivatives for hedging or leverage, and funds that offer strategies employing cryptocurrency futures as complex. The notice does not introduce new rules for complex products but reminds members of their current regulatory obligations and solicits comments on potential measures to enhance FINRA’s historical approach to overseeing broker-dealers’ sales practices with respect to complex products. The potential measures discussed include clearer disclosures, account-level approvals, and proficiency tests for self-directed investors. The full text of the notice to members can be accessed at: <https://www.finra.org/rules-guidance/notices/22-08>.

## B. FINRA Letters

### ***1. Letter from Joseph E. Price, FINRA, to Bradley J. Swenson, Chief Compliance Officer, ALPS Distributors, Inc., dated 22 April 2013***

In this regulatory guidance letter, FINRA permits the use of pre-inception (or back-tested) index performance for ETPs in communications limited to “institutional investors” (as defined in Rule 2210(a)(4)). Back-tested performance data models the performance of an index as if it had existed prior to its inception date. Institutions that are financial intermediaries may not

distribute such communications to retail investors. FINRA imposes a number of conditions on the use of such back-tested performance, including, but not limited to, that: it must be clearly labeled “for use with institutions only, not for use with retail investors;” it may only be used for an index created according to a pre-defined set of rules that cannot be altered, except under extraordinary circumstances; it may only be used to market passive, not active, ETPs; it must include an offer to provide the rule set or methodology for such performance; and it must show current calendar quarter-end performance. FINRA also notes a number of considerations for firms in determining whether or not to use back-tested performance with institutional investors. The full text of the letter can be accessed at: <https://www.finra.org/rules-guidance/guidance/interpretive-letters/bradley-j-swenson-alps-distributors-inc>.

**2. Letter from Joseph E. Price, FINRA, to Edward P. Macdonald, Executive Vice President, Deputy General Counsel, Hartford Funds Distributors, LLC, dated 12 May 2015 (Hartford Letter)**

In this regulatory guidance letter focused on registered mutual funds, FINRA permits the use of registered mutual fund related performance in communications distributed solely to “institutional investors” (as defined in Rule 2210(a)(4)). While the Hartford Letter focuses on registered mutual funds, FINRA confirmed in a frequently asked question in 2017 that it also applies in the context of actively managed ETFs. FINRA defines “related performance information” as actual performance of all separate or private accounts or funds that have (1) substantially similar investment policies, objectives, and strategies, and (2) are currently, or were previously, managed by the same adviser/sub-adviser that manages the relevant registered fund. FINRA had previously imposed a blanket prohibition on registered funds’ use of related performance in marketing materials, notwithstanding that the SEC permits such performance information to be included in statutory (but not summary) prospectuses. The Hartford Letter provides an exception to such prohibition, permitting the use of related performance for registered funds in institutional sales materials, subject to a lengthy list of conditions, including that: the related performance will include all related accounts and will be presented in a composite or a list (in which the investment performance of each account will be displayed with equal prominence); any institutional communication with related performance will be clearly labeled “for use with institutions only, not for use with retail investors;” any related performance will disclose performance information net of fees and expenses of related accounts, or net of a model fee that is the highest fee charged to any account managed in the strategy; if gross performance information is also provided, certain enumerated disclosures will be included; related performance will be clearly labeled as such, will contain clear disclosure of the applicable dates for the performance, and will be current as of the most recently-ended calendar quarter; a registered fund in existence for more than one year will display its actual performance more prominently than the related performance; and institutional communications will disclose any material differences between the related performance funds or accounts

and the relevant registered fund. The substance of these conditions generally tracks well-established SEC-related performance guidance, which, as noted above, has long permitted the use of registered fund related performance in registration statements, representing a partial harmonization of regulatory regimes. However, distribution of such sales materials to retail investors is not permitted. The full text of the letter can be accessed at: <https://www.finra.org/rules-guidance/guidance/interpretive-letters/interpretive-letter-edward-p-macdonald-hartford-funds-distributors-llc>. The text of the frequently asked question can be accessed at: <https://www.finra.org/rules-guidance/guidance/faqs/advertising-regulation#d3>.



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## **Published by K&L Gates LLP**

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