

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-89438; File No. SR-NYSEArca-2020-51)

July 31, 2020

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of Natixis Vaughan Nelson Select ETF and Natixis Vaughan Nelson MidCap ETF under NYSE Arca Rule 8.601-E

I. Introduction

On June 12, 2020, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of the following under NYSE Arca Rule 8.601-E (Active Proxy Portfolio Shares): Natixis Vaughan Nelson Select ETF and Natixis Vaughan Nelson MidCap ETF (each a “Fund” and, collectively, the “Funds”). On June 17, 2020, the Exchange filed Amendment No. 1 to the proposed rule change, which superseded and replaced the proposed rule change in its entirety. On June 19, 2020, the Exchange filed Amendment No. 2 to the proposed rule change, which superseded and replaced the proposed rule change, as modified by Amendment No. 1, in its entirety. The proposed rule change, as modified by Amendment No. 2, was published for comment in the Federal Register on June 29, 2020.³ The Commission has received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 2.

¹ 15 U.S.C.78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 89127 (June 23, 2020), 85 FR 39000 (“Notice”).

II. Description of the Proposed Rule Change, as Modified by Amendment No. 2⁴

The Exchange is proposing to list and trade Shares of the Funds under NYSE Arca Rule 8.601-E (Active Proxy Portfolio Shares).⁵ Each Fund will be a series of Natixis ETF Trust II (“Trust”), which will be registered with the Commission as an open-end management investment company.⁶ Natixis Advisors, L.P. (“Adviser”) will be the investment adviser to the Funds and

⁴ Additional information regarding the Shares and the Funds can be found in the Notice, supra note 3, and the Registration Statement, infra note 6.

⁵ The term “Active Proxy Portfolio Share” means a security that (a) is issued by an investment company registered under the Investment Company Act of 1940 (“Investment Company”) organized as an open-end management investment company that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; (b) is issued in a specified minimum number of shares, or multiples thereof, in return for a deposit by the purchaser of the Proxy Portfolio and/or cash with a value equal to the next determined net asset value (“NAV”); (c) when aggregated in the same specified number of Active Proxy Portfolio Shares, or multiples thereof, may be redeemed at a holder’s request in return for the Proxy Portfolio and/or cash to the holder by the issuer with a value equal to the next determined NAV; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter. See NYSE Arca Rule 8.601-E(c)(1). See also note 7 infra regarding the definition of “Proxy Portfolio.” The Commission recently approved the Exchange’s proposed rule change to adopt NYSE Arca Rule 8.601-E to permit the listing and trading of Active Proxy Portfolio Shares. See Securities Exchange Act Release No. 89185 (June 29, 2020), 85 FR 40328 (July 6, 2020) (SR-NYSEArca-2019-095) (“Active Proxy Portfolio Shares Order”).

⁶ The Exchange states that the Trust is registered under the Investment Company Act of 1940 (“1940 Act”). On April 24, 2020, the Trust filed a registration statement on Form N-1A under the Securities Act of 1933 (“1933 Act”) (15 U.S.C. 77a), and under the 1940 Act relating to the Funds (File Nos. 333-235466 and 811-23500) (“Registration Statement”). The Trust and NYSE Group, Inc. filed a Seventh Amended and Restated Application for an Order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812-14870), dated October 21, 2019 (“Application”). On November 14, 2019, the Commission issued a notice regarding the Application. Investment Company Release No. 33684 (File No. 812-14870). On December 10, 2019, the Commission issued an order (“Exemptive Order”) under the 1940 Act granting the exemptions requested in the Application (Investment Company Act Release No. 33711 (December 10, 2019)).

Vaughan Nelson Investment Management, L.P. will be the subadviser (“Sub-Adviser”) for the Funds. ALPS Distributors, Inc. will act as the distributor and principal underwriter (“Distributor”) for the Funds.

The Exchange represents that the Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer and has implemented and will maintain a “fire wall” with respect to such broker-dealer affiliate regarding access to information concerning the composition of and/or changes to a Fund’s Actual Portfolio and/or Proxy Portfolio.⁷ The Exchange represents that the Sub-Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer and the Sub-Adviser has implemented and will maintain a “fire wall” with respect to its broker-dealer affiliate regarding access to information concerning the composition of and/or changes to the applicable Fund’s Actual Portfolio and/or Proxy Portfolio. In the event (a) the Adviser or Sub-Adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer, or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to a Fund’s Actual Portfolio and/or Proxy Portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding a Fund’s Actual Portfolio and/or Proxy Portfolio or changes thereto. In addition, the Exchange

⁷ 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. See NYSE Arca Rule 8.601-E(c)(2). 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 1940 Act applicable to such series. See NYSE Arca Rule 8.601-E(c)(3).

represents that any person related to the Adviser, Sub-Adviser or a Fund who makes decisions pertaining to a Fund's Actual Portfolio or the Proxy Portfolio or has access to non-public information regarding a Fund's Actual Portfolio and/or the Proxy Portfolio or changes thereto are subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding a Fund's Actual Portfolio and/or the Proxy Portfolio or changes thereto.

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

A. Description of the Funds

According to the Exchange, the Adviser believes a Fund would allow for efficient trading of Shares through an effective Fund portfolio transparency substitute and publication of related information metrics, while still shielding the identity of the full Fund portfolio contents to protect a Fund's performance-seeking strategies. Even though a Fund would not publish its full portfolio contents daily, the Adviser believes that the NYSE Proxy Portfolio Methodology would allow market participants to assess the intraday value and associated risk of a Fund's Actual Portfolio. As a result, the Adviser believes that investors would be able to purchase and sell Shares in the

secondary market at prices that are close to their NAV.

The Exchange states that the Funds will utilize a proxy portfolio methodology— the “NYSE Proxy Portfolio Methodology”— that would allow market participants to assess the intraday value and associated risk of a Fund’s Actual Portfolio and thereby facilitate the purchase and sale of Shares by investors in the secondary market at prices that do not vary materially from their NAV.⁸ The NYSE Proxy Portfolio Methodology would utilize creation of a Proxy Portfolio for hedging and arbitrage purposes.⁹

Each of the Fund’s holdings will conform to the permissible investments as set forth in the Application and Exemptive Order and the holdings will be consistent with all requirements in the Application and Exemptive Order.¹⁰ Any foreign common stocks held by a Fund will be

⁸ The NYSE Proxy Portfolio Methodology is owned by the NYSE Group, Inc. and licensed for use by the Funds. NYSE Group, Inc. is not affiliated with the Funds, Adviser or Distributor. Not all series of Active Proxy Portfolio Shares utilize the NYSE Proxy Portfolio Methodology.

⁹ With respect to the Funds, the Funds will have in place policies and procedures regarding the construction and composition of their respective Proxy Portfolio. Such policies and procedures will be covered by a Fund’s compliance program and other requirements under Rule 38a-1 under the 1940 Act.

¹⁰ Pursuant to the Application and Exemptive Order, the permissible investments for each Fund include only the following instruments: exchange-traded funds (“ETFs”) traded on a U.S. exchange; exchange-traded notes (“ETNs”) traded on a U.S. exchange; U.S. exchange-traded common stocks; common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Shares (“foreign common stocks”) in the Exchange’s Core Trading Session (normally 9:30 a.m. and 4:00 p.m. Eastern time (“E.T.”)); U.S. exchange-traded preferred stocks; U.S. exchange-traded American Depositary Receipts (“ADRs”); U.S. exchange-traded real estate investment trusts; U.S. exchange-traded commodity pools; U.S. exchange-traded metals trusts; U.S. exchange-traded currency trusts; and U.S. exchange-traded futures that trade contemporaneously with a Fund’s Shares. In addition, a Fund may hold cash and cash equivalents (short-term U.S. Treasury securities, government money market funds, and repurchase agreements). A Fund will not hold short positions or invest in derivatives other than U.S. exchange-traded futures, will not borrow for investment purposes, and will not purchase any securities that are illiquid investments at the time of purchase.

traded on an exchange that is a member of the Intermarket Surveillance Group (“ISG”) or with which the Exchange has in place a comprehensive surveillance sharing agreement.

1. Natixis Vaughan Nelson Select ETF

According to the Exchange, the Fund’s investment objective is to seek long-term capital appreciation. The Fund, under normal market conditions,¹¹ will invest primarily in equity securities, including exchange-traded common stocks, exchange-traded preferred stocks and exchange-traded real estate investment trusts (“REITs”).

2. Natixis Vaughan Nelson MidCap ETF

According to the Exchange, the Fund’s investment objective is to seek long-term capital appreciation. The Fund, under normal market conditions, will invest primarily in companies that, at the time of purchase, have market capitalizations either within the capitalization range of the Russell Midcap® Value Index, an unmanaged index that measures the performance of companies with lower price-to-book ratios and lower forecasted growth values within the broader Russell Midcap Index, or of \$15 billion or less. Equity securities that the Fund may invest in may take the form of exchange-traded stock in corporations and exchange-traded REITs or other exchange-traded trusts and similar securities representing direct or indirect ownership interests in business organizations.

3. Investment Restrictions

The Shares of the Funds will conform to the initial and continued listing criteria under NYSE Arca Rule 8.601-E. Each Fund’s holdings will be limited to and consistent with permissible holdings as described in the Application and all requirements in the Application and

¹¹ The term "normal market conditions" is defined in NYSE Arca Rule 8.601-E(c)(5).

Exemptive Order.¹² Each Fund's investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, a Fund's investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2X or -3X) of a Fund's primary broad-based securities benchmark index (as defined in Form N-1A).¹³

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the Act and rules and regulations thereunder applicable to a national securities exchange.¹⁴ In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 2 is consistent with Section 6(b)(5) of the Act,¹⁵ which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposal is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading in the Shares when a reasonable degree of certain pricing transparency cannot be assured.

As such, the Commission believes the proposal is reasonably designed to maintain a fair and

¹² See note 10, *supra*.

¹³ A Fund's broad-based securities benchmark index will be identified in a future amendment to its Registration Statement following a Fund's first full calendar year of performance.

¹⁴ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁵ 15 U.S.C. 78f(b)(5).

orderly market for trading the Shares. The Commission also finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act, which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities.

Specifically, prior to commencement of trading in the Shares, the Exchange will obtain a representation from the Adviser that the NAV per Share of each Fund will be calculated daily and that the NAV, Proxy Portfolio, and Actual Portfolio for each Fund will be made available to all market participants at the same time.¹⁶ Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Quotation and last-sale information for the Shares, ETFs, ETNs, U.S. exchange-traded common stocks, preferred stocks, and ADRs will be available via the Consolidated Tape Association high-speed line or from the exchange on which such securities trade. Price information for futures, foreign stocks, and cash equivalents is available through major market data vendors. The Funds' website will include additional information updated on a daily basis, including, on a per Share basis for each Fund, the prior business day's NAV, the closing price or bid/ask price at the time of calculation of such NAV, and a calculation of the premium or discount of the closing price or bid/ask price against such NAV. The website will also disclose the percentage weight overlap between the holdings of the Proxy Portfolio compared to the Actual Portfolio holdings for the prior business day, and any other information regarding premiums and discounts and the bid/ask spread for a Fund as may be required for other ETFs under Rule 6c-11 under the 1940 Act. The Proxy Portfolio holdings for

¹⁶ See NYSE Arca Rule 8.601-E(d)(1)(B).

each Fund (including the identity and quantity of investments in the Proxy Portfolio) will be publicly available on the Funds' website before the commencement of trading in Shares on each business day and the Funds' website will disclose the information required under NYSE Arca Rule 8.601-E(c)(3).¹⁷ The website and information will be publicly available at no charge.

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

The Commission also believes that the Exchange's rules regarding trading halts help to ensure the maintenance of fair and orderly markets for the Shares. Specifically, pursuant to its rules, the Exchange may consider all relevant factors in exercising its discretion to halt trading in the Shares and will halt trading in the Shares under the conditions specified in NYSE Arca Rule 7.12-E. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, including (1) the extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Portfolio and/or Actual Portfolio; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.¹⁸ Trading in the Shares also will be

¹⁷ See NYSE Arca Rule 8.601-E(c)(3), which requires that the website for each series of Active Proxy Portfolio Shares shall disclose the information regarding the Proxy Portfolio as provided in the exemptive relief pursuant to the 1940 Act applicable to such series, including the following, to the extent applicable: (i) ticker symbol; (ii) CUSIP or other identifier; (iii) description of holding; (iv) quantity of each security or other asset held; and (v) percentage weighting of the holding in the portfolio.

¹⁸ See NYSE Arca Rule 8.601-E(d)(2)(D)(i).

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

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

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

its broker-dealer affiliate regarding access to information concerning the composition of and/or changes to a Fund's Actual Portfolio and/or Proxy Portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding a Fund's Actual Portfolio and/or Proxy Portfolio or changes thereto; and

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

Finally, trading in the Shares will be subject to the existing trading surveillances, administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange,¹⁹ and the Exchange states that these surveillance procedures are adequate to properly monitor Exchange

¹⁹ See NYSE Arca Rule 8.601-E, Commentary .03, which requires, as part of the surveillance procedures for Active Proxy Portfolio Shares, a Fund's investment adviser to, upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily Actual Portfolio holdings of the Fund.

trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

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

The Commission finds that the following support the listing and trading of the Shares:

- (1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.601-E.
- (2) A minimum of 100,000 Shares for each Fund will be outstanding at the commencement of trading on the Exchange.
- (3) The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed, and may obtain information, regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of the ISG. In addition, the Exchange may obtain information regarding trading in the Shares and underlying exchange-traded instruments from markets and other entities with which the Exchange has in place a comprehensive surveillance sharing agreement. Any foreign common stocks held by a Fund will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.
- (4) The Exchange has appropriate rules to facilitate trading in the Shares during all trading sessions.
- (5) For initial and continued listing, the Funds will be in compliance with Rule 10A-3 under the Act.²⁰

²⁰ See 17 CFR 240.10A-3.

- (6) Each Fund’s holdings will conform to the permissible investments as set forth in the Application and Exemptive Order and the holdings will be consistent with all requirements set forth in the Application and Exemptive Order. Each Fund’s investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage).
- (7) With respect to Active Proxy Portfolio Shares, all of the Exchange member obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with Exchange rules and federal securities laws, and the Exchange and FINRA will continue to monitor Exchange members for compliance with such requirements.

Pursuant to Commentary .01 to NYSE Arca Rule 8.601-E, all statements and representations made in the filing regarding: (1) the description of the portfolio; (2) limitations on portfolio holdings; or (3) the applicability of Exchange listing rules specified in the filing constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer must notify the Exchange of any failure by a Fund to comply with the continued listing requirements and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor²¹ for compliance with the continued listing requirements. If a Fund is not in

²¹ The Commission notes that certain proposals for the listing and trading of exchange-traded products include a representation that the exchange will “surveil” for compliance with the continued listing requirements. See, e.g., Securities Exchange Act Release No. 77499 (April 1, 2016), 81 FR 20428, 20432 (April 7, 2016) (SR-BATS-2016-04). In the context of this representation, it is the Commission’s view that “monitor” and “surveil” both mean ongoing oversight of compliance with the continued listing requirements. Therefore, the Commission does not view “monitor” as a more or less stringent obligation than “surveil” with respect to the continued listing requirements.

compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5-E(m).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act²² that the proposed rule change (SR-NYSEArca-2020-51), as modified by Amendment No. 2, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

J. Matthew DeLesDernier
Assistant Secretary

²² 15 U.S.C. 78s(b)(2).

²³ 17 CFR 200.30-3(a)(12).