

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91266; File No. SR-NYSEArca-2020-104)

March 5, 2021

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of the Stance Equity ESG Large Cap Core ETF under NYSE Arca Rule 8.601-E

I. Introduction

On November 30, 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 Stance Equity ESG Large Cap Core ETF (“Fund”) under NYSE Arca Rule 8.601-E (Active Proxy Portfolio Shares). The proposed rule change was published for comment in the Federal Register on December 21, 2020.³

On January 22, 2021, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On January 22, 2021, the Exchange filed Amendment No. 1 to the proposed rule

¹ 15 U.S.C.78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 90665 (Dec. 15, 2020), 85 FR 83129.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 90974, 86 FR 7446 (Jan. 28, 2021). The Commission designated March 21, 2021, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

change, which replaced and superseded the proposed rule change as originally filed.⁶ On March 4, 2021, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change, as modified by Amendment No. 1.⁷ The Commission has received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 2.

⁶ Amendment No. 1 is available on the Commission's website at <https://www.sec.gov/comments/sr-nysearca-2020-104/srnysearca2020104-8276588-228099.pdf>.

⁷ In Amendment No. 2, the Exchange: (1) updated the status of the application for exemptive relief filed by the Issuer (as defined below); (2) changed the distributor and principal underwriter of the Fund; (3) stated that, in connection with the creation and redemption of Active Proxy Portfolio Shares, such creation or redemption may be exchanged for a Proxy Portfolio (as defined below) and/or cash; (4) represented that the Proxy Portfolio will not include any asset that is ineligible to be in the Actual Portfolio (as defined below) of the Fund; (5) stated that the Fund's holdings will conform to the permissible investments as set forth in the Exemptive Order (as defined below) and that the holdings will be consistent with all requirements in the Exemptive Order; (6) supplemented its description of the Fund's investment objective; (7) revised the description of the availability of pricing information; (8) described that a creation unit will generally consist of 5,000 shares; (9) supplemented its description of the disclosures about the Proxy Portfolio that the Fund will publish on its website each business day; (10) stated that the Exchange will obtain a representation from the Issuer that the net asset value per Share of the Fund will be calculated daily and that the net asset value, Portfolio Reference Basket (as defined below), and the Actual Portfolio (as defined below) for the Fund will be made available to all market participants at the same time; and (11) made conforming and technical changes. Because Amendment No. 2 does not materially alter the substance of the proposed rule change, Amendment No. 2 is not subject to notice and comment. Amendment No. 2 is available on the Commission's website at <https://www.sec.gov/comments/sr-nysearca-2020-104/srnysearca2020104.htm>.

II. Summary of the Exchange’s Description of the Proposed Rule Change, as Modified by Amendment No. 2⁸

NYSE Arca Rule 8.900-E(b)(1) requires the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Active Proxy Portfolio Shares on the Exchange; thus, the Exchange submitted this proposal to list and trade the Shares.⁹ The Shares of the Fund will be issued by The RBB Fund, Inc. (“Issuer”), a corporation organized under the laws of the State of Maryland and registered with the Commission as an open-end management investment company.¹⁰ Red Gate Advisers, LLC (“Adviser”) will be the investment

⁸ Additional information regarding the Fund, the Issuer (as defined below), and the Shares can be found in Amendment No. 2, supra note 7, and Registration Statement, supra note 9.

⁹ As defined in Rule 8.601-E(c)(1), the term “Active Proxy Portfolio Share” means a security that (a) is issued by an investment company (“Investment Company”) registered under the Investment Company Act of 1940 (“1940 Act”) 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 minimum 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. Rule 8.601-E(c)(2) provides that 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.” Rule 8.601-E(c)(3) provides that 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.

¹⁰ The Issuer is registered under the 1940 Act. On November 23, 2020, the Issuer filed a registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 033-20827 and 811-05518) (“Registration Statement”). The Issuer filed an 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. 812-15165), dated September 28, 2020 (“Application”). The Issuer

adviser to the Fund. Stance Capital, LLC and Vident Investment Advisory, LLC will be the sub-advisers (“Sub-Advisers”) for the Fund. U.S. Bank, N.A. will serve as the Fund’s custodian, U.S. Bancorp Fund Services, LLC will serve as the Fund’s transfer agent, and Vigilant Distributors, LLC will act as the distributor and principal underwriter for the Fund.

A. Description of the Fund

The Exchange states that 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.¹¹

According to the Exchange, the Fund’s investment objective is to seek long-term capital appreciation. The Exchange states that the Fund will invest, under normal circumstances, at least 80% of the value of its net assets (plus the amount of any borrowings for investment purposes) in

filed an amended Application on December 10, 2020, and a second amended Application on January 15, 2021. On February 26, 2021, the Commission issued an order (“Exemptive Order”) under the 1940 Act granting the exemptions requested in the Application (Investment Company Act Release No. 34215, February 26, 2021). The Exchange states that investments made by the Fund will comply with the conditions set forth in the Application and the Exemptive Order. According to the Exchange, the description of the operation of the Fund in the proposal is based, in part, on the Registration Statement and the Application.

¹¹ Pursuant to the Application and Exemptive Order, the permissible investments for the Fund include only the following instruments: ETFs traded on a U.S. exchange, exchange-traded notes (“ETNs”) traded on a U.S. exchange, U.S. exchange-traded common stocks, 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; common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Fund’s Shares; exchange-traded futures that are traded on a U.S. futures exchange contemporaneously with the Fund’s Shares; and cash and cash equivalents (which are short-term U.S. Treasury securities, government money market funds, and repurchase agreements). According to the Exchange, the Fund will not borrow for investment purposes, hold short positions, or purchase any securities that are illiquid investments at the time of purchase.

exchange-traded equity securities of U.S. large capitalization issuers that meet environmental, social, and governance standards, as determined by Stance Capital, LLC.

B. Investment Restrictions

The Exchange states that the Shares of the Fund will conform to the initial and continued listing criteria under Rule 8.601-E. The Fund's holdings will be consistent with all requirements in the Application and Exemptive Order. According to the Exchange, the 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, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2X or -3X) of the Fund's primary broad-based securities benchmark index (as defined in Form N-1A).¹²

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.¹³ 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,¹⁴ 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

¹² The Fund's broad-based securities benchmark index will be identified in a future amendment to its Registration Statement following the Fund's first full calendar year of performance.

¹³ 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).

¹⁴ 15 U.S.C. 78f(b)(5).

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 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, the Commission notes that the Exchange, prior to commencement of trading in the Shares, will obtain a representation from the Issuer that the NAV per Share will be calculated daily and that the NAV, Portfolio Reference Basket,¹⁵ and Actual Portfolio for the 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. The Exchange states that quotation and last sale information for the Shares and U.S. exchange-traded instruments (excluding futures contracts) will be available via the Consolidated Tape Association ("CTA") high-speed line, from the exchanges on which such securities trade, or through major market data vendors or subscription services. Intraday pricing information for all exchange-

¹⁵ The Exchange states that the "Portfolio Reference Basket" is the Proxy Portfolio for purposes of Rule 8.601-E(c)(3). See Amendment No. 2, supra note 7, at n. 9.

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

traded instruments, which includes all eligible instruments except cash and cash equivalents, will be available on the exchanges on which they trade or through major market data vendors or subscription services. Intraday pricing information for cash equivalents is available through major market data vendors, subscription services, and/or pricing services. The Fund's website will include additional information updated on a daily basis, including, on a per Share basis for the 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 Guardrail Amount,¹⁷ which is the maximum deviation between the weightings of the specific securities in the Portfolio Reference Basket and the weightings of those specific securities in the Actual Portfolio, and any other information regarding premiums and discounts and the bid/ask spread for the Fund as may be required for other ETFs under Rule 6c-11 under the 1940 Act. The identity and quantity of investments in the Portfolio Reference Basket will be publicly available on the Fund's website before the commencement of trading in Shares on each Business Day and the Fund's website will disclose the information required under Rule 8.601-E(c)(3).¹⁸ The website and information will be publicly available at no charge.

The Commission also notes 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

¹⁷ See Amendment No. 2, *supra* note 7, at 9.

¹⁸ See 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.

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.¹⁹ Trading in the Shares also will be 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 Exchange provides 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 the Fund’s Actual Portfolio and/or Proxy Portfolio. The Sub-Advisers are not registered as broker-dealers and are not affiliated with a broker-dealer;
- Any person related to the Adviser, Sub-Adviser(s), or the Fund who makes decisions pertaining to the Fund’s Actual Portfolio or Proxy Portfolio or who has access to non-public information regarding the 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 the Fund’s Actual Portfolio and/or the Proxy Portfolio or changes thereto;

¹⁹ See NYSE Arca Rule 8.601-E(d)(2)(D)(i).

- In the event (a) the Adviser or Sub-Adviser(s) 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 the 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 the Fund's Actual Portfolio and/or Proxy Portfolio or changes thereto; and
- Any person or entity, including any service provider for the Fund, who has access to non-public information regarding the 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 the 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 the Fund's Actual Portfolio and/or Proxy Portfolio.

Finally, the Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Exchange, as well as cross-market surveillances

administered by FINRA on behalf of the Exchange,²⁰ and that these surveillance procedures are adequate to properly monitor Exchange 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.

In support of this proposal, the Exchange represents also that:²¹

- (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 the 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 Intermarket Surveillance Group ("ISG"). In addition, the Exchange may obtain information regarding trading in the Shares and 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 the Fund will be traded on an exchange that is a member of the

²⁰ See NYSE Arca Rule 8.601-E, Commentary .03, which requires, as part of the surveillance procedures for Active Proxy Portfolio Shares, the 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.

²¹ See Amendment No. 2, supra note 7.

ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

- (4) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.
- (5) For initial and continued listing, the Fund will be in compliance with Rule 10A-3 under the Act.²²
- (6) 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 set forth in the Application and Exemptive Order. The 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). The Fund's investments will include common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Shares and exchange-traded futures that are traded on a U.S. futures exchange contemporaneously with the Shares.
- (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.

The Exchange also represents that all statements and representations made in the filing regarding: (1) the description of the portfolios or reference assets; (2) limitations on portfolio

²² See 17 CFR 240.10A-3.

holdings or reference assets; 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 Exchange represents that the Exchange will obtain a representation from the Adviser, prior to commencement of trading in the Shares, that the Adviser will advise the Exchange of any failure by the Fund to comply with the continued listing requirements and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor²³ for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5-E(m).

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendments No. 2, is consistent with Section 6(b)(5) of the Act²⁴ and Section 11A(a)(1)(C)(iii) of the Act²⁵ and the rules and regulations thereunder applicable to a national securities exchange.

²³ 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.

²⁴ 15 U.S.C. 78f(b)(5).

²⁵ 15 U.S.C. 78k-1(a)(1)(C)(iii).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act²⁶ that the proposed rule change (SR-NYSEArca-2020-104), 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.²⁷

J. Matthew DeLesDernier
Assistant Secretary

²⁶ Id.

²⁷ 17 CFR 200.30-3(a)(12).