

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-97378; File No. SR-NYSEARCA-2023-34)

April 25, 2023

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Certain Representations Relating to the Hennessy Stance ESG Large Cap ETF

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 21, 2023, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to make changes to certain representations made in the proposed rule change previously filed with the Securities and Exchange Commission (the “Commission” or “SEC”) pursuant to Rule 19b-4 relating to the Hennessy Stance ESG Large Cap ETF, shares of which are currently listed and traded on the Exchange under NYSE Arca Rule 8.601-E. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments

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

<sup>2</sup> 17 CFR 240.19b-4.

it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Commission has approved the listing and trading on the Exchange of shares (“Shares”) of the Hennessy Stance ESG Large Cap ETF (the “Fund”),<sup>3</sup> under NYSE Arca Rule 8.601-E, which governs the listing and trading of Active Proxy Portfolio Shares, which are securities issued by an actively managed open-end investment management company.<sup>4</sup> Shares of

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<sup>3</sup> See Securities Exchange Act Release No. 96559 (December 21, 2022), 87 FR 79919 (December 28, 2022) (SR-NYSEARCA-2022-84) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Certain Representations) (Renaming the Fund from Stance Equity ESG Large Cap Core ETF to Hennessy Stance ESG Large Cap ETF).

<sup>4</sup> See Securities Exchange Act Release No. 89185 (June 29, 2020), 85 FR 40328 (July 6, 2020) (SR-NYSEArca-2019-95) (Approval of a Proposed Rule Change To Adopt NYSE Arca Rule 8.601–E To Permit the Listing and Trading of Active Proxy Portfolio Shares and To List and Trade Shares of the Natixis U.S. Equity Opportunities ETF Under Proposed NYSE Arca Rule 8.601–E). Rule 8.601-E(c)(1) provides that “[t]he 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 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 “[t]he term “Actual Portfolio” means the identities and quantities of the securities and other assets held by the Investment Company that shall form the basis for the Investment Company’s calculation of NAV at the end of the business day.” Rule 8.601- E(c)(3) provides that “[t]he term “Proxy

the Fund are currently listed and traded on the Exchange under NYSE Arca Rule 8.601-E.<sup>5</sup> The Shares of the Fund are issued by Hennessy Funds Trust (the “Issuer”), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company. The Fund’s investment adviser is Hennessy Advisors, Inc. (the “Adviser”).

The Releases stated that the Fund will invest primarily in exchange-traded equity securities of U.S. large capitalization issuers by investing mainly in companies that meet environmental, social and governance (“ESG”) standards, as determined by the Adviser. The Exchange proposes to update the investment strategy employed by the Fund to provide that the Fund may invest in exchange-traded equity securities of U.S. small- and medium-capitalization issuers that meet ESG standards, as determined by the Adviser, while continuing to invest primarily in exchange-traded equity securities of U.S. large-capitalization issuers that meet ESG standards, as determined by the Adviser.<sup>6</sup>

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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.”

<sup>5</sup> The Commission previously approved the listing and trading of the shares of the Fund. See Securities Exchange Act Nos. 91266 (March 5, 2021) 86 FR 13930 (March 11, 2021) (SR-NYSEArca-2020-104) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the Stance Equity ESG Large Cap Core ETF Under NYSE Arca Rule 8.601–E) (“Approval Order”); and 90665 (December 15, 2020) 85 FR 83129 (December 21, 2020) (SR-NYSEArca-2020-104) (Notice of Filing of Proposed Rule Change To List and Trade Shares of the Stance Equity ESG Large Cap Core ETF Under NYSE Arca Rule 8.601–E) (“Notice”). (The Approval Order and the Notice are referred to collectively herein as the “Releases”).

<sup>6</sup> The Fund filed a registration statement on Form N-1A under the Securities Act of 1933 (File No. 033-52154) and the Investment Company Act of 1940 (File No. 811-07168), which became effective on December 23, 2022 (the “Registration Statement”). The Fund’s final, definitive prospectus, dated as of December 23, 2022, was filed pursuant to Rule 497(c) of the Securities Act of 1933 on December 28, 2022, and contains the current name and investment strategy of the Fund (the “Final Prospectus”). A supplement to the

The Adviser believes the change to the Fund’s investment strategy (as described herein) is appropriate and consistent with the best interest of the Fund and Fund shareholders. In connection with the change, the Fund’s investment objective and principal investment strategies will remain substantially the same. While the Fund will have an increased ability to focus on investing in exchange-traded equity securities of U.S. small- and medium-capitalization issuers that meet ESG standards, the Fund will continue to invest primarily in exchange-traded equity securities of U.S. large-capitalization issuers that meet ESG standards, as determined by the Adviser. The Adviser further believes that this strategy change is not material because (1) the investment objective will remain the same and the principal investment strategies will remain substantially the same; (2) the Fund will continue to primarily invest in equity securities of large-capitalization companies; and (3) the principal investment risks are substantially the same.

As of the close of business on April 27, 2023, the Fund’s non-material strategy change will be effected to allow the Fund an increased ability to focus on investing in exchange-traded equity securities of U.S. small- and medium-capitalization issuers that meet ESG standards, while continuing to invest primarily in exchange-traded equity securities of U.S. large-capitalization issuers that meet ESG standards, as determined by the Adviser. Accordingly, as of the close of business on April 27, 2023, the name of the Fund will change from Hennessy Stance ESG Large Cap ETF to Hennessy Stance ESG ETF.

The investment objective of the Fund, which is to seek long-term capital appreciation,

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Final Prospectus containing the new name and revised strategy, as described herein, was filed on February 27, 2023 pursuant to Rule 497(e) of the Securities Act of 1933 (the “Supplement”). The description of the Fund and the Shares contained herein are based on the Registration Statement, the Final Prospectus and the Supplement. The change to the Fund’s investment strategy as described herein will be implemented effective as of the close of business on April 27, 2023.

will remain unchanged.

Except for the changes noted above, all other representations made in the Releases remain unchanged.<sup>7</sup> The Fund will comply with all continued listing requirements under Rule 8.601-E, including all other requirements and conditions set forth in the applicable exemptive order.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>8</sup> that an exchange have rules that are 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, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, and is designed to promote just and equitable principles of trade and to protect investors and the public interest. Consistent with the representations in the Releases, the Fund will continue to seek its investment objective by investing in exchange-traded securities of issuers that meet ESG standards. As a result of the change to the Fund's investment strategy, the Exchange is proposing to amend certain representations in the Releases regarding the universe of securities in which the Fund may invest and consistent with that change, to rename the Fund.

The Adviser believes the change to the Fund's investment strategy is appropriate and consistent with the best interest of the Fund and Fund shareholders. In connection with the

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<sup>7</sup> See supra note 5.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

change, the Fund's investment objective and principal investment strategies will remain substantially the same. While the Fund will have an increased ability to focus on investing in exchange-traded equity securities of U.S. small- and medium-capitalization issuers that meet ESG standards, the Fund will continue to invest primarily in exchange-traded equity securities of U.S. large-capitalization issuers that meet ESG standards, as determined by the Adviser. The Adviser further believes that this strategy change is not material because (1) the investment objective will remain the same and the principal investment strategies will remain the substantially the same; (2) the Fund will continue to primarily invest in equity securities of large-capitalization companies; and (3) the principal investment risks are substantially the same. The proposed changes to the investment strategy will remain consistent with applicable requirements under the 1940 Act.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange believes the proposed rule change will not impose a burden on competition and will benefit investors and the marketplace by permitting continued listing and trading of Shares of the Fund following implementation of the changes described above, which changes would not impact the investment objective of the Fund.

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

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

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition;

and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>11</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>12</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal does not raise any new or novel issues and doing so will allow the Shares to continue to be listed and traded on the Exchange without interruption in a manner that is consistent with the Commission's prior Approval Order and the applicable requirements under the Investment Company Act of 1940. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>13</sup>

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>14</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

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

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEARCA-2023-34 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-NYSEARCA-2023-34. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the

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<sup>14</sup> 15 U.S.C. 78s(b)(2)(B).



proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange.

Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-NYSEARCA-2023-34 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

Sherry R. Haywood  
Assistant Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).