

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT COMPANY ACT OF 1940
Release No. 34863 / March 21, 2023

In the Matter of

TIDAL TRUST II

234 W Florida St, Suite 203

Milwaukee, WI 53204

TOROSO INVESTMENTS, LLC

898 N. Broadway, Suite 2

Massapequa, New York 11758

FORESIDE FUND SERVICES, LLC

Three Canal Plaza, Suite 100

Portland, ME 04101

(812-15411)

ORDER UNDER SECTIONS 6(c) AND 17(b) OF THE INVESTMENT COMPANY
ACT OF 1940

Tidal Trust II, Toroso Investments, LLC and Foreside Fund Services, LLC filed an application on November 28, 2022 and an amendment to the application on January 26, 2023 requesting an order under section 6(c) of the Investment Company Act of 1940 (“Act”) for an exemption from sections 2(a)(32), 5(a)(1) and 22(d) 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.

The order permits: (a) ActiveShares ETFs (as described in the Reference Order (as defined below)) to issue shares (“Shares”) redeemable in large aggregations only (“creation units”); (b) secondary market transactions in Shares to occur at negotiated market prices rather than at net asset value; and (c) certain affiliated persons of an ActiveShares ETF to deposit securities into, and receive securities from, the ActiveShares ETF in connection with the purchase and redemption of creation units. The relief in the order incorporates by reference terms and conditions of the same relief of a previous order granting the same relief sought by applicants, as that order may be amended from time to time (“Reference Order”).¹

On February 23, 2023, a notice of the filing of the application was issued (Investment Company Act Release No. 34841). The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued unless a hearing was ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

¹ Precidian ETFs Trust, et al., Investment Company Act Rel. Nos. 33440 (April 8, 2019) (notice) and 33477 (May 20, 2019) (order).

The matter has been considered and it is found, on the basis of the information set forth in the application, as amended, that granting the requested exemptions is 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.

It is further found that the terms of the proposed transactions, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transactions are consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

Accordingly, in the matter of Tidal Trust II, et al. (File No. 812-15411),

IT IS ORDERED, under section 6(c) of the Act, that the requested exemption from sections 2(a)(32), 5(a)(1) and 22(d) of the Act and rule 22c-1 under the Act is granted, effective immediately, subject to the conditions contained in the application, as amended.

IT IS FURTHER ORDERED, under sections 6(c) and 17(b) of the Act, that the requested exemption from sections 17(a)(1) and 17(a)(2) of the Act is granted, effective immediately, subject to the conditions contained in the application, as amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood
Assistant Secretary