

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97158; File No. SR-NYSEARCA-2022-61)

March 17, 2023

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade the Shares of the Breakwave Tanker Shipping ETF

I. Introduction

On September 13, 2022, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)² and Rule 19b-4 thereunder,³ a proposed rule change to list and trade shares (“Shares”) of the Breakwave Tanker Shipping ETF (“Fund”) under NYSE Arca Rule 8.200-E, Commentary .02. The proposed rule change was published for comment in the Federal Register on September 27, 2022.⁴

On November 2, 2022, pursuant to Section 19(b)(2) of the Act,⁵ 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.⁶ On December 8, 2022, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act⁷ to determine whether to approve or disapprove the proposed

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 95853 (Sept. 21, 2022), 87 FR 58552 (“Notice”).

⁵ 15 U.S.C. 78s(b)(2).

⁶ See Securities Exchange Act Release No. 96213, 87 FR 67513 (Nov. 8, 2022).

⁷ 15 U.S.C. 78s(b)(2)(B).

rule change.⁸ On March 6, 2023, the Exchange filed Amendment No. 1, which amended and replaced the proposed rule change in its entirety.⁹ The Commission has received no comments on the proposed rule change. The Commission is approving the proposed rule change, as modified by Amendment No. 1.

II. Exchange's Description of the Proposed Rule Change, as Modified by Amendment No. 1

As described in more detail in Amendment No 1 to the proposed rule change,¹⁰ the Exchange proposes to list and trade the Shares of the Fund under NYSE Arca Rule 8.200-E, Commentary .02, which governs the listing and trading of Trust Issued Receipts on the

⁸ See Securities Exchange Act Release No. 96469, 87 FR 76524 (Dec. 14, 2022).

⁹ In Amendment No. 1, the Exchange: (1) clarified information regarding the markets for Freight Futures (as defined herein) and exchange-traded options on Freight Futures; (2) clarified the correlation between the Benchmark Portfolio (as defined herein) and the Fund's portfolio and the adjustments and rebalancing of the Fund's portfolio; (3) provided additional background information on the freight futures markets, generally, and additional supporting information on the liquidity of the Freight Futures markets, specifically; (4) clarified the types of instruments and other holdings in which the Fund will not invest; (5) expanded its description of the surveillance applicable to the Shares, Freight Futures, and exchange-listed options on Freight Futures; (6) added a representation that, prior to the commencement of trading of the Shares, it will inform its ETP Holders (as defined herein) in an Information Bulletin of the special characteristics and risks associated with trading the Shares, among other information; and (7) made other technical amendments. Because the amendment does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, it is not subject to notice and comment. Amendment No. 1 is available on the Commission's website at: <https://www.sec.gov/comments/sr-nysearca-2022-61/srnysearca202261-20158810-326900.pdf>.

¹⁰ See *id.* Additional information about the tanker freight industry, including tanker vessel supply, demand for seaborne oil transportation, calculation of NAV (as defined herein), dissemination of IFV (as defined herein), creation and redemption of Shares, general availability of information, trading halts, trading rules, surveillance, and information bulletin, among other things, can be found in the proposed rule change, as modified by Amendment No. 1.

Exchange. The Fund will be a series of ETF Managers Group Commodity Trust I (“Trust”),¹¹ and the Fund and the Trust will be managed and controlled by their sponsor and investment manager, ETF Managers Capital LLC (“Sponsor”).¹²

According to the Exchange, the Fund’s investment objective will be to provide investors with exposure to the daily change in the price of tanker freight futures,¹³ before expenses and liabilities of the Fund, by tracking the performance of a portfolio (“Benchmark Portfolio”) consisting of positions in the three-month strip of the nearest calendar quarter of futures contracts on specified indexes (individually, “Reference Index”) that measure prices for shipping crude oil (“Freight Futures”).¹⁴ Each Reference Index is published each U.K. business day by the London-based Baltic Exchange¹⁵ and measures the charter rate for shipping crude oil in a specific size

¹¹ The Exchange states that on July 1, 2022, the Trust submitted to the Commission on a confidential basis its draft registration statement on Form S-1 (“Registration Statement”) under the Securities Act of 1933.

¹² The Sponsor is registered with the Commodity Futures Trading Commission (“CFTC”) as a commodity pool operator and is a member of the National Futures Association. Breakwave Advisors LLC (“Breakwave”) is registered as a commodity trading advisor with the CFTC and will serve as the Fund’s commodity trading advisor. ETFMG Financial LLC will be the Fund’s distributor, and US Bancorp Fund Services LLC will be the Fund’s administrator and transfer agent (“Administrator” and “Transfer Agent”).

¹³ According to the Exchange, freight futures contracts mainly exist for dry bulk and tanker freight rates. The Fund’s exposure will be to tanker (not dry bulk) freight futures.

¹⁴ According to the Exchange, Freight Futures are primarily traded through broker members of the Forward Freight Agreement Brokers Association (“FFABA”). Members of the FFABA must be members of the Baltic Exchange and must be regulated by the Financial Conduct Authority if resident in the U.K., or if not resident in the U.K., by an equivalent body if required by the authorities in the jurisdiction. Freight Futures are quoted in U.S. dollars per metric ton, with a minimum lot size of 1,000 metric tons. One lot represents freight costs to transport in U.S. dollars. The nominal value of a contract is simply the product of lots and Freight Futures prices.

¹⁵ The Baltic Exchange, which is a wholly-owned subsidiary of the Singapore Exchange, is a membership organization and an independent source of maritime market information for the trading and settlement of physical and derivative shipping contracts.

category of cargo ship and for a specific route. The two Reference Indexes are: (1) the TD3C Index: Persian Gulf to China 270,000 metric tons cargo (Very Large Crude Carrier or VLCC tankers); and (2) the TD20 Index: West Africa to Europe, 130,000 metric tons cargo (Suezmax tankers).¹⁶ The value of each of the TD3C Index and TD20 Index is disseminated daily at 4:00 p.m., London Time by the Baltic Exchange.¹⁷ Such Reference Index information also is publicly available and widely disseminated by Reuters, Bloomberg, and/or other major market data vendors. Freight Futures reflect market expectations for the future cost of transporting crude oil.¹⁸

The Fund will seek to achieve its objective by purchasing Freight Futures. The Fund also may hold exchange-traded options on Freight Futures. Currently, the exclusive markets for Freight Futures and options on Freight Futures are ICE Futures Europe (“ICE”) and the Chicago

¹⁶ The Reference Indexes are published by the Baltic Exchange’s subsidiary company, Baltic Exchange Information Services Ltd (“Baltic”), which publishes a wide range of market reports, fixture lists, and market rate indicators on a daily and (in some cases) weekly basis. The Baltic indices, which include the Reference Indexes, are an assessment of the price of moving the major raw materials by sea. The indices are based on assessments of the cost of transporting various bulk cargoes, both wet (e.g., crude oil and oil products) and dry (e.g., coal and iron ore), made by leading shipbroking houses located around the world on a per ton and daily hire basis. The information is collated and published by the Baltic Exchange. Procedures relating to administration of the Baltic indices are set forth in “The Baltic Exchange, Guide to Market Benchmarks” November 2016, including production methods, calculation, confidentiality and transparency, duties of panelists, code of conduct, audits, and quality control.

¹⁷ Freight futures, including tanker Freight Futures, settle monthly over the arithmetic average of spot index assessments in the contract month for the relevant underlying product, rounded to three decimal places. The daily Reference Index publication, against which Freight Futures settle, is published by the Baltic Exchange.

¹⁸ Generally, Freight Futures trade from approximately 3:00 a.m. Eastern Time (“E.T.”) to approximately 1:00 p.m. E.T. The great majority of trading volume occurs during London business hours, from approximately 4:00 a.m. E.T. time to approximately 12:00 p.m. E.T. Some limited trading takes place during Asian business hours as well (12:00 a.m. to 3:00 a.m. E.T.). The final closing prices for settlement are published daily around 12:30 p.m. E.T. Final cash settlement occurs the first business day following the expiry day.

Mercantile Exchange (“CME”). The applicable exchange acts as a counterparty for each member for clearing purposes. The Fund’s investments in Freight Futures will be cleared by ICE and/or CME.¹⁹

According to the Exchange, although freight derivatives have been used in the shipping industry for more than 30 years, freight futures (including tanker Freight Futures) have been clearing on exchanges since 2005. In addition, the Exchange represents that the liquidity of tanker Freight Futures (clean and dirty) has been increasing, in lot terms, over the last five years.²⁰ For example, in 2021, approximately 560,000 lots in Freight Futures traded. As of 2022, open interest in Freight Futures stood at approximately 145,000 lots across all asset classes representing an estimated value of more than \$2 billion. Of such open interest in 2022, TD3C contracts accounted for approximately 50% in lots of all tanker Freight Futures.

The Fund will invest substantially all of its assets in Freight Futures constituting the Benchmark Portfolio, and at any given time, the average maturity of the futures held by the Fund will be approximately 50 to 70 days. The Fund’s portfolio will be traded with a view to reflecting the performance of the Benchmark Portfolio, whether the Benchmark Portfolio is rising, falling, or flat over any particular period. The Benchmark Portfolio, which is maintained by Breakwave and will be rebalanced annually, will hold long positions in Freight Futures corresponding to the TD3C Index and TD20 Index. The Benchmark Portfolio’s initial allocation will be approximately 90% TD3C contracts and 10% TD20 contracts, based on contract value, not

¹⁹ The Exchange represents that CME and ICE are members of the Intermarket Surveillance Group (“ISG”).

²⁰ Tanker Freight Futures are quoted in U.S. Dollars per metric ton, with a minimum lot size of 1,000 metric tons. One lot represents freight costs to transport in U.S. Dollars. The nominal value of a contract is simply the product of lots and Freight Futures prices. There are futures contracts of up to 72 consecutive months, starting with the current month, available for trading for each vessel class.

number of lots. The Benchmark Portfolio will consist of positions in the three-month strip of the nearest calendar quarter of Freight Futures and roll them constantly to the next calendar quarter. The three-month strip of each of the four-calendar quarters are January, February, and March (Q1); April, May, and June (Q2); July, August, and September (Q3); and October, November, and December (Q4). The Benchmark Portfolio will hold all positions to maturity and settle them in cash. During any given calendar quarter, the Benchmark Portfolio will progressively increase its position to the next calendar quarter three-month strip, thus maintaining constant long exposure to the Freight Futures market as positions mature.

To track the Benchmark Portfolio, the Fund will attempt to roll positions in the nearby calendar quarter, on a pro rata basis. For example, if the Fund was currently holding the Q1 calendar quarter comprising the January, February and March monthly contracts, each week in the month of February, the Fund will attempt to purchase Q2 contracts in an amount equal to approximately one quarter of the expiring February positions. As a result, by the end of February, the Fund would have rolled the February position to Q2 freight contracts, leaving the Fund with March and Q2 contracts. At the end of March, the Fund will have completed the roll and will then hold only Q2 exposure comprising April, May, and June monthly contracts.

During the month of December of each year, the Fund will rebalance its portfolio in order to bring the allocation of assets back to the initial allocation levels (i.e., 90% and 10% in accordance with the Benchmark Portfolio construction). Given each asset's individual price movements during the year, such percentages might deviate from the targeted allocation. To maintain the correlation between the Fund and the change in the Benchmark Portfolio with regard to the performance of near-dated versus longer-dated futures (i.e., based on contract duration), the Sponsor may adjust the Fund's portfolio of investments on a daily basis in

response to creation and redemption orders or otherwise as required. For example, if needed, the Fund will sell current month Freight Futures and buy next calendar quarter futures to maintain a balance in terms of average duration, but also sell TD3C futures and buy TD20 futures to maintain the initial allocation levels (i.e., 90%; 10%). The Sponsor anticipates that the Fund's Freight Futures positions will be held to expiration and settle in cash against the respective Reference Index as published by the Baltic Exchange and ICE or CME. Because Freight Futures contracts are cash settled, the Fund need not close out of existing contracts. Rather, it will hold such contracts to expiration and apply the above methodology in order acquire the nearby calendar contract.

When establishing positions in Freight Futures, the Fund will be required to deposit initial margin with a value of approximately 10% to 40% of the notional value of each Freight Futures position at the time it is established. These margin requirements are established and subject to change from time to time by the relevant exchanges, clearing houses, or the Fund's futures commission merchant ("FCM"). On a daily basis, the Fund will be obligated to pay, or entitled to receive, variation margin in an amount equal to the change in the daily settlement level of its overall Freight Futures positions. Any assets not required to be posted as margin with the FCM will be held at the Fund's custodian in cash or cash equivalents.²¹ Like other investors in Freight Futures, the Fund will place purchase orders for Freight Futures with an execution broker. The broker will identify a selling counterparty and, simultaneously with the completion of the transaction, will submit the block traded Freight Futures to the relevant exchange or

²¹ The Fund will hold cash or cash equivalents, such as U.S. Treasuries or other high credit quality, short-term fixed-income or similar securities for direct investment or as collateral for the U.S. Treasuries and for other liquidity purposes, and to meet redemptions that may be necessary on an ongoing basis.

clearing house for clearing, thereby completing and creating a cleared futures transaction. If the exchange or clearing house does not accept the transaction for any reason, the transaction will be considered null and void and of no legal effect.

The Exchange represents that not more than 10% of the net assets of the Fund in the aggregate invested in Freight Futures and exchange-traded options on Freight Futures will consist of Freight Futures and exchange-traded options on Freight Futures whose principal market is not a member of the ISG or is a market with which the Exchange does not have in place a comprehensive surveillance sharing agreement (“CSSA”). In addition, while the Fund maintains the right to invest in other maturities of Freight Futures, if such strategy is deemed necessary, according to the Exchange, the Benchmark Portfolio will not include, and the Fund will not invest in, swaps or other over-the-counter derivative instruments.

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange’s proposal to list and trade the Shares is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.²² In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with: (1) Section 6(b)(5) of the Exchange Act,²³ 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;

²² In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²³ 15 U.S.C. 78f(b)(5).

and (2) Section 11A(a)(1)(C)(iii) of the Exchange Act,²⁴ 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.

As stated in the proposal, the Fund will seek to achieve its objective by purchasing Freight Futures (and exchange-traded options on Freight Futures) that are cleared through major exchanges and, currently, the exclusive markets for Freight Futures (and options on Freight Futures) are ICE and CME, both of which are members of ISG and are regulated in the U.S. by the CFTC.²⁵ The Exchange further states that, although freight derivatives have been used in the shipping industry for more than 30 years, freight futures (including tanker Freight Futures) have been clearing on exchanges since 2005. In summary, Freight Futures are cleared on well-established, regulated markets that are members of the ISG.²⁶ The Commission finds that the Exchange will be able to obtain and share surveillance information with a significant regulated market in Freight Futures.

To be listed and traded on the Exchange, the Shares must comply with the requirements of NYSE Arca Rule 8.200-E, Commentary .02 thereto on an initial and continuing basis. 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.

Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association. The intraday, closing prices, and settlement

²⁴ 15 U.S.C. 78k-1(a)(1)(C)(iii).

²⁵ See supra note 19.

²⁶ See supra notes 19-20 and accompanying text.

prices of the Freight Futures will be readily available from the applicable futures exchange websites, automated quotation systems, published or other public sources, or major market data vendors. Complete real-time data for Freight Futures is available by subscription through on-line information services. Trading prices for the Freight Futures and exchange-traded options on Freight Futures will be disseminated by one or more major market data vendors during the NYSE Arca Core Trading Session of 9:30 a.m. to 4:00 p.m. E.T. CME and ICE provide on a daily basis transaction volumes, transaction prices, and open interest on their respective websites. Daily settlement prices and historical settlement prices are available through a subscription service to the Baltic Exchange, ICE, and CME; however, these exchanges provide the daily settlement price change of Freight Futures on their respective websites. Certain Freight Futures brokers provide real time pricing information to the general public either through their websites or through data vendors, such as Bloomberg or Reuters. Most Freight Futures brokers provide, upon request, individual electronic screens that market participants can use to transact, place orders, or only monitor Freight Futures market price levels.

In addition, the Fund's website will display the applicable end of day closing net asset value ("NAV"). The daily holdings of the Fund will be disclosed on the Fund's website before 9:30 a.m. E.T. each day. The Fund's website disclosure of portfolio holdings will include, as applicable: (1) the composite value of the total portfolio; (2) the quantity and type of each holding (including the ticker symbol, maturity date, or other identifier, if any) and other descriptive information including, in the case of an option, its strike price; (3) the percentage weighting of each holding in the Fund's portfolio; (4) the number of Freight Futures contracts and the value of each Freight Futures (in U.S. dollars); (5) the type (including maturity, ticker

symbol, or other identifier) and value of each Treasury security and cash equivalent; and (6) the amount of cash held in the Fund's portfolio.

The daily closing Benchmark Portfolio level and the percentage change in the daily closing level for the Benchmark Portfolio will be publicly available from one or more major market data vendors. The intraday value of the Benchmark Portfolio, updated every 15 seconds, will be available through major market data vendors during those times that the hours trading in Freight Futures overlap with trading hours on NYSE Arca (i.e., between 9:00 a.m. and 1:00 p.m. E.T.). The indicative fund value ("IFV"), which will be calculated by using the prior day's closing NAV per Share of the Fund as a base and updating that value throughout the trading day to reflect changes in the most recently reported trade price for the futures and/or options held by the Fund, will be disseminated on a per Share basis every 15 seconds during regular NYSE Arca Core Trading Session hours of 9:30 a.m. E.T. to 4:00 p.m. E.T.²⁷ The Administrator will calculate the NAV of the Fund on each NYSE Arca trading day. The NAV for a particular trading day will be released after 4:00 p.m. E.T., and the NAV for the Shares will be disseminated daily to all market participants at the same time.

The Commission also believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. If the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to

²⁷ The Exchange represents that the customary trading hours of Freight Futures trading are 3:00 a.m. E.T. to 1:00 p.m. E.T. This means that there is a gap in time at the end of each day during which the Fund's Shares will be traded on the NYSE Arca, but real-time trading prices for contracts are not available. During such gaps in time the IFV will be calculated based on the end of day price of such contracts from the Baltic Exchange's, CME's, and ICE's immediately preceding settlement prices.

all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants. Further, the Exchange may halt trading during the day in which an interruption to the dissemination of the IFV or the intraday value of the Benchmark Portfolio occurs; if the interruption to the dissemination of the IFV or the value of the Benchmark Portfolio persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12-E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Moreover, trading of the Shares will be subject to NYSE Arca Rule 8.200-E, Commentary .02(e), which sets forth certain restrictions on Equity Trading Permit holders (“ETP Holders”) acting as registered Market Makers in Trust Issued Receipts to facilitate surveillance.

Under the proposal, the Exchange or the Financial Industry Regulatory Authority (“FINRA”), on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, Freight Futures, and exchange-traded options on Freight Futures with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares, Freight Futures, and exchange-traded options on Freight Futures from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, Freight Futures, and options on Freight Futures from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA.

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

- (1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.200-E.
- (2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.
- (3) 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, which are designed to detect violations of Exchange rules and applicable federal securities laws, and these 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.
- (4) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) the risks involved in trading the Shares during the Early and Late Trading Sessions when an updated IFV will not be calculated or publicly disseminated; (b) the procedures for purchases and redemptions of Shares in creation baskets and redemption baskets (and that Shares are not individually redeemable); (c) NYSE Arca Rule 9.2-E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (d) how information regarding the IFV is disseminated; (e) how information regarding portfolio holdings is disseminated;

- (f) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to, or concurrently with, the confirmation of a transaction; and (g) trading information.
- (5) For initial and continued listing, the Funds will be in compliance with Rule 10A-3 under the Act,²⁸ as provided by NYSE Arca Rule 5.3-E.
 - (6) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.
 - (7) The Fund will invest substantially all of its assets in Freight Futures currently constituting the Benchmark Portfolio, and not more than 10% of the net assets of the Fund in the aggregate invested in Freight Futures and exchange-traded options on Freight Futures will consist of Freight Futures and exchange-traded options on Freight Futures whose principal market is not a member of the ISG or is a market with which the Exchange does not have a CSSA.
 - (8) The Benchmark Portfolio will not include, and the Fund will not invest in, swaps or other over-the-counter derivative instruments.
 - (9) Statements and representations made in this filing regarding (a) the description of the Reference Indexes and portfolios, (b) limitations on portfolio holdings or reference assets, or (c) applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for listing the Shares on the Exchange.
 - (10) The Sponsor has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and,

²⁸ 17 CFR 240.10A-3.

pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements.²⁹ 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).

This approval order is based on all of the Exchange’s representations and description of the Fund, including those set forth above and in Amendment No. 1 to the proposed rule change.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Sections 6(b)(5) and 11A(a)(1)(C)(iii) of the Act³⁰ and the rules and regulations thereunder applicable to a national securities exchange.

²⁹ The Commission notes that certain other proposals for the listing and trading of exchange-traded products include a representation that the listing exchange will “surveil” for compliance with the continued listing requirements. See, e.g., Securities Exchange Act Release No. 77620 (Apr. 14, 2016), 81 FR 23339 (Apr. 20, 2016) (SR-BATS-2015-124). In the context of this representation, it is the Commission’s view that “monitor” and “surveil” both mean ongoing oversight of the Fund’s 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.

³⁰ 15 U.S.C. 78f(b)(5) and 15 U.S.C. 78k-1(a)(1)(C)(iii).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,³¹ that the proposed rule change (SR-NYSEARCA-2022-61), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

J. Matthew DeLesDernier,

Deputy Secretary.

³¹ 15 U.S.C. 78s(b)(2).

³² 17 CFR 200.30-3(a)(12).