

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97267; File No. SR-NYSEARCA-2023-30)

April 7, 2023

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending the Rule Governing the Listing and Trading of Shares of the Gabelli Equity Income ETF

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 5, 2023, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 reflect a change in the name of the Gabelli Equity Income ETF (the “Fund”) and an updated description of the investment strategy for the Fund, shares of which are currently listed and traded on the Exchange pursuant to NYSE Arca Rule 8.900-E. The proposed rule change is available on the Exchange’s website at 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 it received on the proposed rule change. The text of those statements may be examined at the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 purpose of this rule filing is to reflect a change to the name of the Fund and an updated description of the Fund’s investment strategy. The Commission previously approved the listing and trading of Shares of the Fund on the Exchange pursuant to NYSE Arca Rule 8.900-E.³ NYSE Arca Rule 8.900-E governs the listing and trading of Managed Portfolio Shares, which are securities issued by an actively managed open-end investment management company.⁴ The Shares of the Fund are issued by the Gabelli ETFs Trust (the “Trust”), a

³ See Securities Exchange Act Release No. 89663 (August 25, 2020), 85 FR 53868 (August 31, 2020) (SR-NYSEArca-2020-48) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of Gabelli ETFs Under Rule 8.900-E, Managed Portfolio Shares) (the “Approval Order”).

⁴ See Securities Exchange Act Release No. 88648 (April 15, 2020), 85 FR 22200 (April 21, 2020). Rule 8.900-E(c)(1) provides that the term “Managed Portfolio Share” means a security that (a) represents an interest in an investment company (“Investment Company”) registered under the Investment Company Act of 1940 (the “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 Creation Unit, or multiples thereof, in return for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value and delivered to the Authorized Participant (as defined in the Investment Company’s Form N-1A filed with the Commission) through a Confidential Account; (c) when aggregated into a Redemption Unit, or multiples thereof, may be redeemed for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value delivered to the Confidential Account for the benefit of the Authorized Participant; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.⁵

The Approval Order stated that the Fund's name would be the Gabelli Equity Income ETF. The Exchange now proposes to update the name of the Fund to the Gabelli Commercial Aerospace and Defense ETF, which name is reflected in the Registration Statement and is consistent with the updated description of the Fund discussed below.

The Approval Order stated that the Fund seeks a high level of total return on its assets with an emphasis on income and intends to invest in income producing equity securities including U.S. exchange-listed common stock and preferred stock. The Exchange proposes to update the description of the Fund to provide that, as set forth in the Registration Statement, the Fund will seek to achieve its investment objective by investing, under normal market conditions, at least 80% of its net assets (including any assets purchased using borrowings for investment purposes) in securities in the aerospace and defense sectors. According to the Registration

⁵ The Trust is registered under the 1940 Act. The Commission issued an order granting exemptive relief to the Trust ("Exemptive Order") under the 1940 Act on December 3, 2019 (Investment Company Act Release No. 33708). The Exemptive Order was granted in response to the Trust's application for exemptive relief (the "Exemptive Application") (File No. 812-15036). The Trust has filed a registration statement on Form N-1A under the Securities Act of 1933 (the "1933 Act") and the 1940 Act for the Fund (File No. 812-15036) ("Registration Statement"). The Trust subsequently filed Post-Effective Amendment No. 6 to the Registration Statement reflecting the new name of the Fund and the updated description of the Fund's investment strategy. See Post-Effective Amendment No. 6 to Registration Statement on Form N-1A for the Trust, dated March 11, 2023 (File Nos. 333-238109 and 811-23568). Investments made by the Fund will comply with the conditions set forth in the Exemptive Application and the Exemptive Order. See Approval Order, 85 FR at 53869 & n. 9. The description of the Fund and the changes to the Fund proposed herein are based, in part, on information in the Registration Statement, as amended. Shares of the Fund have been listed and traded on the Exchange since January 4, 2023. The Adviser (as defined in the Approval Order) represents that it will not implement the changes described herein until the instant proposed rule change is operative.

Statement, the Fund defines an “aerospace and defense” company as a company that derives at least 50% of its revenues from, or devotes 50% of its assets to, aerospace and/or defense related activities. Aerospace companies include manufacturers, assemblers and distributors of aircraft and aircraft parts; defense companies include producers of components and equipment for the defense industry, such as military aircraft, radar equipment and weapons.

Except for the changes noted above, all other representations made in the Exchange’s previous rule filing to list and trade Shares of the Fund remain unchanged and will continue to constitute continuing listing requirements for the Fund. As set forth in the Approval Order, the Fund’s holdings will continue to conform to the permissible investments as set forth in the Exemptive Application and Exemptive Order, and the holdings will be consistent with the Registration Statement and all requirements in the Exemptive Application and Exemptive Order.⁶ The Fund will also continue to comply with the requirements of Rule 8.900-E.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁸ in particular, in that it is 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.

⁶ See note 3, *supra*.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

The Exchange believes the proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest because it would reflect the change in the Fund's name and description, as set forth in the Registration Statement. Specifically, the proposed rule change would reflect a change in the Fund's name from the Gabelli Equity Income ETF to the Gabelli Commercial Aerospace and Defense ETF and reflect the Fund's updated strategy, through which the Fund will seek to achieve its investment objectives by investing, under normal market conditions, at least 80% of its net assets (including any assets purchased using borrowings for investment purposes) in securities in the aerospace and defense sectors. The proposed change is also designed to remove impediments to and perfect the mechanism of a free and open market, promote just and equitable principles of trade, and protect investors and the public interest because the Fund's investments will be consistent with the Registration Statement and continue to comply with all conditions set forth in the Exemptive Application and Exemptive Order. Except for the changes noted above, all other representations made in the Exchange's original rule filing remain unchanged and will continue to constitute continuing listing requirements for the Fund.

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. As noted above, the proposed rule change would reflect only a change in the name and description of the Fund and would thus facilitate the continued listing and trading of Shares of the Fund on the Exchange, thereby promoting competition among various ETF products, to the benefit of investors and the marketplace.

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 Act⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁰

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹¹ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange asserts that waiver of the operative delay would be consistent with the protection of investors and the public interest because it would promptly reflect the updated name and description of the Fund and facilitate the continued listing and trading of the shares of the Fund. In addition, the Commission notes that all types and quantities of proposed permitted investments are presently permitted. For these reasons, and because the proposal raises no novel

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 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.

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

legal or regulatory issues, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.¹²

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.

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. Please include File Number SR-NYSEARCA-2023-30 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-2023-30. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

¹² For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 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. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEARCA-2023-30 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.¹³

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Assistant Secretary

¹³ 17 CFR 200.30-3(a)(12), (59).