



8011-01p
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73866; File No. SR-NYSEArca-2014-120)

December 17, 2014

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 2 Thereto, to List and Trade Shares of the Sit Rising Rate Fund under NYSE Arca Equities Rule 8.200

I. Introduction

On October 16, 2014, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of the Sit Rising Rate Fund (“Fund”), pursuant to NYSE Arca Equities Rule 8.200. The proposed rule change was published for comment in the Federal Register on November 4, 2014.³ On November 6, 2014, the Exchange filed Amendment No. 2 to the proposed rule change, which superseded and replaced the proposed rule change as originally filed.⁴ The proposed rule change, as modified by Amendment No. 2, was published for comment in the Federal Register on November 20, 2014.⁵ The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 2.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 73464 (Oct. 29, 2014), 79 FR 65437.

⁴ Amendment No. 2 replaced SR-NYSEArca-2014-120 and superseded such filing in its entirety. Amendment No. 1 was filed on November 3, 2014, and withdrawn on November 6, 2014.

⁵ See Securities Exchange Act Release No. 73602 (Nov. 14, 2014), 79 FR 69173 (“Notice”).

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Fund pursuant to NYSE Arca Equities Rule 8.200, Commentary .02, which permits the listing of Trust Issued Receipts (“TIRs”). The Exchange has represented that the Fund will meet the initial and continued listing requirements applicable to TIRs in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto.⁶ 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.⁷

The Fund is a series of the ETF Managers Group Commodity Trust I (“Trust”), a Delaware statutory trust.⁸ The Fund’s sponsor and investment manager is ETF Managers Capital LLC (“Sponsor”), a limited liability company that is a commodity pool operator that is registered with the Commodity Futures Trading Commission⁹ and is a member of the National Futures Association. U.S. Bancorp Fund Services will be the transfer agent, custodian, and administrator for the Fund. Esposito Securities LLC will provide statutory and wholesaling distribution services.

The Fund’s investment objective will be to profit from rising interest rates by tracking the performance of a portfolio (“Benchmark Portfolio”) that consists of exchange traded futures contracts and options on futures on 2, 5 and 10-year U.S. Treasury securities (“Treasury Instruments”) and that is weighted to achieve a targeted negative 10-year average effective portfolio duration (“Benchmark Component Instruments”). The Fund will seek to achieve its

⁶ See id. at 69173.

⁷ See id. at 69177.

⁸ The Trust submitted a registration statement with respect to the Fund on Form S-1 under the Securities Act of 1933 on October 7, 2014 (File No. 333-199190) (“Registration Statement”).

⁹ The Sponsor is not a broker-dealer or affiliated with a broker-dealer. See Notice, supra note 5, 79 FR at 69178.

investment objective by investing in the Benchmark Component Instruments currently constituting the Benchmark Portfolio. The Fund will invest in the Treasury Instruments in the same weighting as the Benchmark Portfolio.

The Benchmark Portfolio will be maintained by Sit Fixed Income Advisors II, LLC (“Sit”)¹⁰ and will be rebalanced, reconstituted, or both, monthly, typically on the 15th of each month and on the next business day if the 15th is a holiday, weekend, or other day on which the national exchanges are closed, to maintain a negative 10-year average effective duration. The Benchmark Portfolio and the Fund will each maintain a short position in Treasury Instruments. The Fund will not use futures contracts or options to obtain leveraged investment results.

The Sponsor anticipates that approximately 5% to 15% of the Fund’s assets will be used as payment for or collateral for Treasury Instruments. In order to collateralize its Treasury Instrument positions the Fund will hold such assets, from which it will post margin to its futures commission merchant (“FCM”), in an amount equal to the margin required by the relevant exchange, and transfer to its FCM any additional amounts that may be separately required by the FCM.¹¹ Any assets not required to be posted as margin with the FCM will be held at the Fund’s administrator in cash or cash equivalents.

The Fund will incur certain expenses in connection with its operations. 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 (such as shares of money market funds) for direct investment

¹⁰ Sit is not affiliated with the Sponsor. Sit is not a broker-dealer or affiliated with a broker-dealer. See id. at 69174 n. 14.

¹¹ When establishing positions in Treasury Instruments, the Fund will be required to deposit initial margin with a value of approximately 3% to 10% of the value of each Treasury Instrument position at the time it is established. These margin requirements are subject to change from time to time by the exchange or the 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 Treasury Instruments positions. See id. at 69174 n. 17.

or as collateral for the Treasury Instruments and for other liquidity purposes and to meet redemptions that may be necessary on an ongoing basis. These expenses and income from the cash and cash equivalent holdings may cause imperfect correlation between changes in the Fund's net asset value ("NAV") and changes in the Benchmark Portfolio, because the Benchmark Portfolio does not reflect expenses or income.

Additional information regarding the Fund, including the NAV calculation, operation of the Fund, the Benchmark Portfolio, restrictions, risks, fees, expenses, and Share creations and redemption can be found in the Notice and the Registration Statement, as applicable.¹²

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade Shares of the Fund is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.¹³ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange 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 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 finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,¹⁵ 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

¹² See supra notes 5 and 8, respectively.

¹³ 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).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78k-1(a)(1)(C)(iii).

assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (“CTA”).¹⁶ The Exchange will make available on its website daily trading volume of the Shares and the closing prices of the Shares.¹⁷ 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.¹⁸ Information regarding the previous day’s closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.¹⁹

The Intraday Indicative Value (“IIV”)²⁰ per Share will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session on the Exchange (9:30 a.m., Eastern Time, to 4:00 p.m., Eastern Time).²¹ The Exchange disseminates the IIV through the facilities of CTA/CQ High Speed Lines.²² In addition, the IIV

¹⁶ See Notice, supra note 5, 79 FR at 69177.

¹⁷ See id.

¹⁸ See id. at 69176.

¹⁹ See id.

²⁰ The Exchange represents that the IIV will be calculated by using the Fund’s prior day’s closing NAV per share as a base and updating that value throughout the trading day to reflect changes in the most recently reported trade price for the Treasury Instruments. The net asset value of the Fund’s cash and cash equivalent holdings will not be updated throughout the day. See id. at 69175. The Exchange states that there is a gap in time at the beginning and the end of each day during which the Fund’s Shares are traded on the Exchange but real-time trading prices for contracts traded on the futures exchanges are unavailable and that, during such gaps in time, the IIV will be calculated based on the end of day price of such contracts from the futures exchanges’ immediately preceding trading session. See id.

²¹ See id. at 69175.

²² See id.

is published on the NYSE Arca's website and is available through on-line information services such as Bloomberg and Reuters.²³

The NAV of the Fund will be calculated daily and will be released after 4:00 p.m. Eastern Time, the end of the Core Trading Session on the Exchange.²⁴ The NAV for the Shares will be disseminated to all market participants at the same time.²⁵ The Fund's website will display the applicable end of day closing NAV and will include additional quantitative information updated on a daily basis, including (a) the current NAV per Share daily and the prior Business Day's NAV and the reported closing price; (b) the mid-point of the bid-ask price in relation to the NAV as of the time the NAV is calculated (the "Bid-Ask Price"); (c) calculation of the premium or discount of such price against such NAV; (d) the Bid-Ask Price of Shares determined using the highest bid and lowest offer as of the time of calculation of the NAV; (e) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four (4) previous calendar quarters; (f) the prospectus; and (g) other applicable quantitative information.²⁶

The Fund will provide website disclosure of its portfolio holdings daily, which will include the names, quantity, price, and market value of the Treasury Instruments held by the

²³ See id.

²⁴ See id. The Fund's NAV will be calculated by taking the current market value of its total assets, subtracting any liabilities, and dividing that total by the total number of outstanding Shares. For purposes of calculating NAV, the administrator will use the closing price of the Treasury Instruments on the U.S. exchanges on which the Treasury Instruments are traded (primarily on the exchanges within the Chicago Mercantile Exchange Group of exchanges and other national exchanges. The Administrator will value all other holdings of the Fund at (1) current market value, if quotations for such property are readily available, or (2) fair value, as reasonably determined by the Administrator, if the current market value cannot be determined. See id.

²⁵ See id. at 69177.

²⁶ See id. at 69176 and 69177.

Fund and other financial instruments such as Treasury Bills, if any; the characteristics of such instruments and cash equivalents; and the amount of cash held in the portfolio of the Fund.²⁷

This website disclosure of the portfolio composition of the Fund will occur at the same time as the disclosure by the Sponsor of the portfolio composition to authorized participants so that all market participants are provided portfolio composition information at the same time.²⁸ In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for Fund Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the Exchange via the National Securities Clearing Corporation.²⁹

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.³⁰ The intraday value of the Benchmark Portfolio, updated every 15 seconds, will also be available through major market data vendors.³¹ The Benchmark Component Instruments constituting the Benchmark Portfolio and anticipated rebalancing dates, information relating to the weighting of Treasury Instruments in the Benchmark Portfolio, and the Benchmark Portfolio methodology will be available on the website for Fund.³²

The Exchange represents that quotation and last sale information for the Treasury Instruments will be widely disseminated through a variety of major market data vendors

²⁷ See id. at 69176.

²⁸ See id.

²⁹ See id.

³⁰ See id. at 69177.

³¹ See id.

³² See id. at 69174 and 69177.

worldwide, such as Bloomberg and Reuters.³³ In addition, the Exchange further represents that complete real-time price (and volume) data for such contracts is available by subscription from Reuters and Bloomberg.³⁴ The intra-day closing prices and settlement prices of the Treasury Instruments are or will be readily available from the websites of the futures exchanges on which the Treasury Instruments are traded.³⁵ The relevant futures exchanges trading Treasury Instruments also provide delayed futures price (and volume) information on current and past trading sessions and market news free-of-charge on their websites.³⁶ The specific contract specifications for such contracts are available at the futures exchanges websites, as well as other financial informational sources.³⁷ The price of Treasury Instruments also is available on a 24-hour basis from major market data vendors.³⁸ Similar information regarding the Treasury securities underlying the Treasury Instruments will be publicly available from various financial information service providers.³⁹ Quotation information from brokers and dealers or major market data vendors will be available for U.S. Treasuries or other high credit quality, short-term fixed-income or similar securities (such as shares of money market funds).⁴⁰

The Commission believes that the proposal to list and trade Shares is reasonably designed to promote fair disclosure of information that may be necessary to price Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be

³³ See id. at 69176.

³⁴ See id.

³⁵ See id. at 69177.

³⁶ See id.

³⁷ See id. at 69176.

³⁸ See id.

³⁹ See id. at 69177.

⁴⁰ See id.

assured. The Exchange represents that it may halt trading during the day in which an interruption to the dissemination of the IIV, the Benchmark Portfolio, or the value of the underlying Treasury Instruments occurs.⁴¹ If an interruption to the dissemination of the IIV, the Benchmark Portfolio, or the value of the underlying Treasury Instruments 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.⁴² In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to 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.⁴³

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares.⁴⁴ Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the underlying Treasury Instruments, (2) if the creation or redemption of Shares is suspended for a period that, in the judgment of the Exchange, may detrimentally impact Exchange trading of the Shares, or (3) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's

⁴¹ See id.

⁴² See id.

⁴³ See id.

⁴⁴ See id.

“circuit breaker” rule⁴⁵ or by the halt or suspension of trading of the underlying Treasury Instruments.⁴⁶

The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees.⁴⁷ Moreover, the trading of the Shares will be subject to NYSE Arca Equities Rule 8.200, Commentary .02(e), which sets forth certain restrictions on Equity Trading Permit (“ETP”) Holders acting as registered market makers in TIRs to facilitate surveillance.⁴⁸ The Financial Industry Regulatory Authority (“FINRA”), on behalf of the Exchange, will communicate as needed regarding trading in the Shares and underlying Treasury Instruments with other markets and entities that are members of the Intermarket Surveillance Group (“ISG”), and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and underlying Treasury Instruments from such markets and other entities.⁴⁹ In addition, the Exchange may obtain information regarding trading in the Shares and underlying Treasury Instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.⁵⁰ FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA’s Trade Reporting and Compliance Engine.⁵¹ Furthermore, the Sponsor is not a broker-dealer or affiliated with a broker-dealer and the Sponsor represents that it will implement and maintain procedures designed to prevent the

⁴⁵ See NYSE Arca Equities Rule 7.12.

⁴⁶ See Notice, supra note 5, 79 FR at 69177.

⁴⁷ See id. at 69178.

⁴⁸ See id. at 69177.

⁴⁹ See id.

⁵⁰ See id. at 69177-78.

⁵¹ See id. at 69178.

use and dissemination of material non-public information.⁵² Sit, which maintains the Benchmark Portfolio, is not affiliated with the Sponsor and is not a broker-dealer or affiliated with a broker-dealer.⁵³

In support of this proposal, the Exchange has made the following representations:

- (1) The Fund will meet the initial and continued listing requirements applicable to TIRs in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto.⁵⁴
- (2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.⁵⁵
- (3) Trading in the Shares will be subject to the existing trading surveillances, administered by the 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.⁵⁶
- (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 Bulletin will discuss the following: (a) the procedures for purchases and redemptions of Shares in Creation Basket aggregations (and that Shares are not individually redeemable); (b) NYSE Arca

⁵² See id.

⁵³ See id.

⁵⁴ See id. at 69176.

⁵⁵ See id. at 69177.

⁵⁶ See id.

Equities Rule 9.2(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; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated; (d) how information regarding the IIV is disseminated; (e) 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 (f) trading information.⁵⁷

- (5) For initial and continued listing, the Fund will be in compliance with Rule 10A-3 under the Act,⁵⁸ as provided by NYSE Arca Equities Rule 5.3.⁵⁹
- (6) For components traded on exchanges, not more than 10% of such components shall consist of components whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.⁶⁰
- (7) The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. That is, the Fund's investments will not be used to seek performance that is a multiple (e.g., 2X or 3X) or inverse multiple of the Fund's Benchmark Portfolio.⁶¹

⁵⁷ See id. at 69178.

⁵⁸ 17 CFR 240.10A-3.

⁵⁹ See Notice, supra note 5, 79 FR at 69177.

⁶⁰ See id. at 69178.

⁶¹ See id. at 69176.

(8) A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange.⁶²

This order is based on the Exchange's representations above, as well as those in the Notice.⁶³

For the forgoing reasons, the Commission believes the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act.

⁶² See id. at 69177.

⁶³ See supra note 5.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,⁶⁴ that the proposed rule change (SR-NYSEArca-2014-120), as modified by Amendment No. 2 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶⁵

Kevin M. O'Neill
Deputy Secretary

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⁶⁴ 15 U.S.C. 78s(b)(2).

⁶⁵ 17 CFR 200.30-3(a)(12).