

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

No written comments were either solicited or received.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2021-004 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-NASDAQ-2021-004. This file number should be included on the subject line if email 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 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-NASDAQ-2021-004, and should be submitted on or before March 10, 2021.

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

**J. Matthew DeLesDernier,**  
*Assistant Secretary.*

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**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Investment Company Act Release No. 34194; 812-15162]

**Blue Tractor ETF Trust and Blue Tractor Group, LLC**

February 10, 2021.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application to amend a prior order for exemptive relief.

**SUMMARY OF APPLICATION:** Applicants request an order ("Amended Order") that would amend a prior order to permit the Funds, as defined below, to use Creation Baskets (as defined below) that include instruments that are not included, or are included with different weightings, in the Fund's Dynamic SSR Portfolio (as defined below).

**APPLICANTS:** Blue Tractor ETF Trust and Blue Tractor Group, LLC.

**FLING DATES:** The application was filed on September 18, 2020, and amended on January 19, 2021.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at [Secretarys-Office@sec.gov](mailto:Secretarys-Office@sec.gov) and serving Applicants with a copy of the request by email.

Hearing requests should be received by the Commission by 5:30 p.m. on March 8, 2021 and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Investment Company Act of 1940 ("Act"), hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing to the Commission's Secretary at [Secretarys-Office@sec.gov](mailto:Secretarys-Office@sec.gov).

**ADDRESSES:** The Commission: [Secretarys-Office@sec.gov](mailto:Secretarys-Office@sec.gov). Applicants: [MMundt@stradley.com](mailto:MMundt@stradley.com).

**FOR FURTHER INFORMATION CONTACT:** Marc Mehrespand, Senior Counsel; Trace W. Rakestraw, Branch Chief, at (202) 551-6825 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

**I. Introduction**

1. On December 10, 2019, the Commission issued an order ("Prior Order")<sup>1</sup> under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c-1 under the Act, 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, and under section 12(d)(1)(f) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.<sup>2</sup> The Prior Order permitted Applicants to introduce a novel type of actively-managed

<sup>1</sup> See Blue Tractor ETF Trust and Blue Tractor Group, LLC, Investment Company Act Release No. 33682 (Nov. 14, 2019) (notice) and Investment Company Act Release No. 33710 (Dec. 10, 2019) (order). Except as specifically noted in the application, all representations and conditions contained in the application previously submitted with the Commission (File No. 812-14625), as amended and restated, and filed with the Commission on October 23, 2019 (the "Prior Application") remain applicable to the operation of the Funds and will apply to any Funds relying on the Amended Order.

<sup>2</sup> The relief granted in the Prior Order under section 12(d)(1)(f) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the 1940 Act (the "Section 12(d)(1) Relief"), and relief 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 relating to the Section 12(d)(1) Relief, will expire one year from the effective date of rule 12d1-4. See Fund of Funds Arrangements, Investment Company Act Rel. No. 10871 (Oct. 7, 2020), at III.

<sup>32</sup> 17 CFR 200.30-3(a)(12).

exchange-traded fund (“ETF”) that is not required to disclose its full portfolio holdings on a daily basis (each, a “Fund”). Rather, pursuant to the Prior Order, each Business Day<sup>3</sup> a Fund publishes a basket of securities and cash that, while different from the Fund’s portfolio, is designed to closely track its daily performance (the “Dynamic SSR Portfolio”).

2. Pursuant to the Prior Order, a Fund sells and redeems its shares (“Shares”) only in Creation Units and generally on an in-kind basis. Purchasers are required to purchase Creation Units by making a deposit of Deposit Instruments and shareholders redeeming their Shares receive a transfer of Redemption Instruments.<sup>4</sup> Under the Prior Order, the names and quantities of the instruments that constitute the Deposit Instruments and the Redemption Instruments for a Fund (collectively, the “Creation Basket”) are the same as the Fund’s Dynamic SSR Portfolio, except to the extent purchases and redemptions are made entirely or in part on a cash basis.

3. Applicants now seek to amend the Prior Order to, in effect, give the Funds the same flexibility with respect to Creation Basket composition as afforded to ETFs relying on rule 6c–11.<sup>5</sup> More specifically, Applicants have requested that the Funds be allowed to use Creation Baskets that include instruments that are not included, or are included with different weightings, in the Fund’s Dynamic SSR Portfolio.

## II. The Application

### A. Applicants’ Proposal

4. Upon amending the Prior Order, the names and quantities of the instruments that may constitute a Creation Basket will generally be the same as the Fund’s Dynamic SSR Portfolio, but a Fund may accept Creation Baskets that differ from the Dynamic SSR Portfolio. Each Business Day, before the open of trading on the Exchange where a Fund is listed, the Fund will publish on its website the composition of any Creation Basket exchanged with an authorized participant on the previous Business Day that differed from such Business

Day’s Dynamic SSR Portfolio other than with respect to cash.

5. Applicants represent that, for portfolio management or other reasons, the Funds may determine that it is desirable to use Creation Baskets that differ from the Dynamic SSR Portfolio (beyond cash substitutions). For example, a Fund may want to use a Creation Basket that contains instruments that are not included in a Fund’s Dynamic SSR Portfolio if the Adviser or Sub-Adviser seeks to add an instrument to the Fund’s Actual Portfolio) without incurring transaction costs associated with the purchase of the instrument for cash. Similarly, if the Adviser or Sub-Adviser decides to sell an instrument from a Fund’s Actual Portfolio, the instrument may be included in a Creation Basket with the expectation that the Fund will deliver it in-kind during a redemption transaction.

6. The Funds will use the requested basket flexibility only in circumstances under which Applicants believe there will be no harm to the Funds or their shareholders, and in order to benefit the Funds and their shareholders by reducing costs, increasing efficiency and improving trading.

7. Pursuant to condition A.10 herein, each Fund will adopt and implement written policies and procedures regarding the construction of its Creation Baskets in accordance with rule 6c–11 under the Act. For purposes of the requirement to comply with the policies and procedures provision in rule 6c–11, only Creation Baskets that differ from a Fund’s Dynamic SSR Portfolio will be treated as a “custom basket” under rule 6c–11(c)(3).

8. Furthermore, pursuant to condition A.9 herein, each Fund will comply with the recordkeeping requirements of rule 6c–11.<sup>6</sup> For purposes of the requirement to comply with the recordkeeping provision in rule 6c–11, only Creation Baskets different from a Fund’s Dynamic SSR Portfolio will be treated as a “custom basket” under rule 6c–11(d)(2)(ii).

### B. Considerations Relating to the Requested Relief

9. Applicants represent that the ability to utilize a Creation Basket that includes instruments that are not included, or are included with different weightings, in a Fund’s Dynamic SSR Portfolio, or are included in different weightings, does not raise any new

policy concerns about reverse engineering of a Fund’s portfolio, self-dealing or overreaching, or selective disclosure beyond those concerns addressed in connection with the Prior Order.

10. *Reverse Engineering.* Applicants acknowledge that, by using a Creation Basket that includes instruments that are not included in a Fund’s Dynamic SSR Portfolio, or are included in different percentages, and by publishing such Creation Basket on its website, the Fund would provide market participants with additional information about which instruments it adds or removes from the Fund’s Actual Portfolio. However, Applicants represent that they will operate the Funds in a manner designed to minimize the risk of reverse engineering and, for the reasons set forth in the application, believe successful front-running or free-riding is highly unlikely.

11. *Self-Dealing or Overreaching.* Applicants state that authorized participants and other market participants will not have the ability to disadvantage the Funds by manipulating or influencing the composition of Creation Baskets, including those that differ from the Dynamic SSR Portfolio. Like the basket and custom basket policies and procedures required of ETFs by rule 6c–11, the Funds will adopt and implement written policies and procedures that govern the construction of Creation Baskets and the process that will be used for the acceptance of Creation Baskets to safeguard the best interests of the Funds and their shareholders.<sup>7</sup>

12. *Selective Disclosure.* The Funds and each person acting on behalf of the Funds will continue to be required to comply with Regulation Fair Disclosure as if it applied to them (except that the exemptions provided in rule 100(b)(2)(iii) therein shall not apply). Applicants believe that the new Creation Basket flexibility being sought by the Applicants does not raise any new concerns about selective disclosure of non-public material information. First, a Fund’s use of, or conversations with authorized participants about, Creation Baskets that would result in such disclosure would effectively be limited by the Funds’ obligation to comply with Regulation Fair Disclosure. Second, as noted above, each Business Day, before the open of trading on the

<sup>3</sup> All capitalized terms not otherwise defined in this notice have the meanings ascribed to them in the Prior Application.

<sup>4</sup> Deposit Instruments and Redemption Instruments may include cash and/or securities.

<sup>5</sup> The Funds are not able to operate in reliance on rule 6c–11 because they do not disclose their full portfolio holdings on a daily basis as required by the rule. See rule 6c–11(c)(1)(i) (requiring an ETF to disclose prominently on its website, publicly available and free of charge, the portfolio holdings that will form the basis for each calculation of NAV per share).

<sup>6</sup> Pursuant to condition A.9, each Fund will also maintain and preserve a copy of the Dynamic SSR Portfolio published on the Fund’s website for each Business Day and a copy of each Creation Basket made available.

<sup>7</sup> See Exchange-Traded Funds, Investment Company Act Release No. 33646 (Sept. 25, 2019) (“ETF Adopting Release”), at 80–94 (discussion of rule 6c–11 requirement for ETF policies and procedures concerning basket construction and acceptance and heightened policies and procedures for custom baskets).

Exchange where a Fund is listed, the Fund will publish on its website the composition of any basket accepted by the Fund on the previous Business Day that differed from such Business Day's Dynamic SSR Portfolio other than with respect to cash.

### III. Requested Exemptive Relief

For the reasons stated above, Applicants believe that the Prior Order, as amended, continues to meet the relevant standards for relief pursuant to section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) 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, and under section 12(d)(1)(j) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.<sup>8</sup>

### IV. Applicants' Conditions

Applicants agree that the Amended Order granting the requested relief will be subject to all of the conditions in the Prior Order, except that condition A.9 of the Prior Order is deleted in its entirety and replaced with the conditions A.9 and A.10 as follows:

9. Each Fund will comply with the recordkeeping requirements of rule 6c-11 under the Act, as amended, except that for purposes of this condition, only Creation Baskets different from the Fund's Dynamic SSR Portfolio will be treated as a "custom basket" under rule 6c-11(d)(2)(ii). In addition, each Fund will maintain and preserve, for a period of not less than five years, in an easily accessible place, (i) a copy of the Dynamic SSR Portfolio published on the Fund's website for each Business Day; and (ii) a copy of each Creation Basket made available.

10. Each Fund will adopt and implement written policies and procedures that govern the construction of Creation Baskets, as required under rule 6c-11(c)(3) under the Act, as amended, except that for purposes of this condition, only Creation Baskets different from the Fund's Dynamic SSR Portfolio will be treated as a "Custom Basket". The Fund's basket policies and procedures will be covered by the Fund's compliance program and other requirements under rule 38a-1 under the Act, as amended.

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

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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<sup>8</sup> See *supra* note 2.

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91095; File No. SR-NYSE-2020-89]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rule 7.35C

February 10, 2021.

#### I. Introduction

On October 23, 2020, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Rule 7.35C (Exchange-Facilitated Auctions) to (1) provide the Exchange authority to facilitate a Trading Halt Auction if a security has not reopened by 3:30 p.m. following a MWCB Halt; (2) widen the Auction Collar for an Exchange-facilitated Trading Halt Auction following an MWCB Halt; (3) provide that certain DMM Interest would not be canceled following an Exchange-facilitated Auction; and (4) change the Auction Reference Price for Exchange-facilitated Core Open Auctions.

The proposed rule change was published for comment in the **Federal Register** on November 12, 2020.<sup>3</sup> On December 18, 2020, the Commission extended the time period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change, to February 10, 2020.<sup>4</sup> On February 5, 2020, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>5</sup> The

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

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

<sup>3</sup> See Securities Exchange Act Release No. 90363 (Nov. 5, 2020), 85 FR 71964 (Nov. 12 2020) ("Notice").

<sup>4</sup> See Securities Exchange Act Release No. 90726 (Dec. 20, 2020), 85 FR 84431 (Dec. 28, 2020).

<sup>5</sup> In Amendment No. 1, the Exchange removed one of the proposed changes from the original proposal. Specifically, the Exchange removed the proposed change to adopt a new definition of Auction Reference Price for exchange-facilitated Core Open Auctions and to amend the temporary rule related to such auctions set forth in Commentary .04 to Rule 7.35C. This aspect of the original proposal is now the subject of a separate proposed rule change filed by the Exchange on February 8, 2021 (SR-NYSE-2021-13).

Commission has received no comments on the proposed rule change.

The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons and is instituting proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, as Modified by Amendment No. 1

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 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 Exchange proposes to amend Rule 7.35C (Exchange-Facilitated Auctions) to (1) provide the Exchange authority to facilitate a Trading Halt Auction<sup>6</sup> if a security has not reopened following a Level 1 or Level 2 trading halt due to extraordinary market volatility under Rule 7.12 ("MWCB Halt") by 3:30 p.m.; (2) widen the Auction Collar for an Exchange-facilitated Trading Halt Auction following a MWCB Halt; and (3) provide that certain DMM Interest<sup>7</sup> would not be cancelled following an Exchange-facilitated Auction.<sup>8</sup>

<sup>6</sup> As defined in Rule 7.35(a)(1), an "Auction" refers to the process for opening, reopening, or closing of trading of Auction-Eligible Securities on the Exchange, which can result in either a trade or a quote.

<sup>7</sup> For purposes of Auctions, the term "DMM Interest" is defined in Rule 7.35(a)(8) to mean all buy and sell interest entered by a DMM unit in its assigned securities and includes: "DMM Auction Liquidity," which is non-displayed buy and sell interest that is designated for an Auction only (see Rule 7.35(a)(8)(A)); "DMM Orders" which are orders, as defined under Rule 7.31, entered by a DMM unit (see Rule 7.35(a)(8)(B)); and "DMM After-Auction Orders," which are orders entered by a DMM unit before either the Core Open Auction or Trading Halt Auction that do not participate in an Auction and are intended instead to maintain price continuity with reasonable depth following an Auction (see Rule 7.35(a)(8)(C)).

<sup>8</sup> In this Amendment No. 1, the Exchange is removing its proposed change to Rule 7.35C(b)(1)