

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34087; 812-15070]

Invesco Capital Management LLC, et al.; Notice of Application

November 6, 2020.

AGENCY: Securities and Exchange Commission (“Commission”).

ACTION: Notice of an application for exemptive relief.

Summary of Application: Applicants request an order under section 6(c) of the Investment Company Act of 1940 (“Act”) for an exemption from sections 2(a)(32), 5(a)(1), 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. If granted, the requested order would permit registered open-end investment companies that are exchange-traded funds (“ETFs”) and are actively managed to operate without being subject to a daily portfolio transparency condition.

Applicants: Invesco Capital Management LLC (“Invesco”), Invesco Distributors, Inc. (the “Distributor”) and Invesco Actively Managed Exchange-Traded Fund Trust (the “Trust”).

Filing Dates: The application was filed on September 25, 2019, and amended on February 28, 2020, May 29, 2020, July 20, 2020, August 26, 2020, and November 6, 2020.

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 to the Commission’s Secretary at Secretaries-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 December 1, 2020, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0-5 under the 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 Secretaries-Office@sec.gov.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, Secretaries-Office@sec.gov; Applicants: Anna Paglia, Esq., Invesco Capital Management LLC, anna.paglia@invesco.com.

FOR FURTHER INFORMATION CONTACT: Kay M. Vobis, Senior Counsel, at (202) 551-6728 or 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. Applicants seek to operate actively-managed ETFs that would not be required to disclose its portfolio holdings on a daily basis (each, a “Fund”). Since the Funds would not disclose their portfolio holdings on a daily basis they would not be able to operate in reliance on rule 6c-11 under the Act, which requires that ETFs disclose their portfolio holdings on a daily basis.¹ Accordingly, Applicants seek an order: 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 thereunder; and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and 17(a)(2) of the Act. The requested order would permit: (a) The Funds to issue shares (“Shares”) redeemable in large aggregations only (“creation units”); (b) secondary market transactions in Shares to occur at negotiated market prices rather than at net asset value (“NAV”); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; and (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of creation units.

2. In 2019 the Commission began issuing orders granting relief to actively managed ETFs that, like the Funds, do not disclose their complete portfolio holdings on a daily basis.² In issuing

¹ 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). See generally Exchange Traded Funds, Investment Company Act Release No. 33646 (Sept. 25, 2019) (“ETF Rule Adopting Release”).

² See, e.g., T. Rowe Price Associates, Inc. and T. Rowe Price Equity Series, Investment Company Act Release Nos. 33685 (Nov. 14, 2019) (notice) (“T. Rowe Price Notice”) and 33713 (Dec. 10, 2019) (order) (“T. Rowe Price Order”); Natixis ETF Trust II, et al., Investment Company Act Release Nos. 33684 (Nov. 14, 2019) (notice) and 33711 (Dec. 10, 2019) (order); Fidelity Beach Street Trust, et al.,

this relief, the Commission recognized that an arbitrage mechanism alternative to full portfolio transparency can work in an efficient manner to maintain secondary market prices at or close to the NAV of an ETF.³

II. The Application⁴

A. The Applicants

3. The Trust is organized as a statutory trust under the laws of the State of Delaware and is registered with the Commission as an open-end management investment company. Invesco is a Delaware limited liability corporation registered as an investment adviser under the Investment Advisers Act of 1940 (“Advisers Act”), and would serve as the investment adviser to the initial Fund. The Distributor, a Delaware corporation, is a registered broker-dealer under the Securities Exchange Act of 1934, as amended (“Exchange Act”), and will act as distributor and principal underwriter of the Funds.

B. The Funds

4. Applicants seek exemptive relief under section 6(c) to operate actively-managed Funds that would not disclose their portfolio holdings on a daily basis.⁵ Applicants maintain that operating the Funds as fully-transparent actively-managed ETFs would make the Funds susceptible to “front running” and “free riding” by other investors and/or managers, which can harm the Funds and their shareholders. Applicants believe that the Funds would allow investors to access active

Investment Company Act Release Nos. 33683 (Nov. 14, 2019) (notice) and 33712 (Dec. 10, 2019) (order); Blue Tractor ETF Trust and Blue Tractor Group, LLC, Investment Company Act Release Nos. 33682 (Nov. 14, 2019) (notice) and 33710 (Dec. 10, 2019) (order). See also Precidian ETFs Trust, et al., Investment Company Act Release No. 33440 (Apr. 8, 2019) and 33477 (May 20, 2019) (order).

³ See, e.g., T. Rowe Price Notice, *supra* note 2, at n.32 and accompanying discussion.

⁴ Capitalized terms not otherwise defined herein shall have the same meaning as in the application.

⁵ Applicants request that the order apply to the series of the Trust identified and described in the application as well as to additional series of the Trust and any other open-end management investment company or series thereof that seek to rely on the relief requested in the application, each of which will operate as an actively-managed ETF. Any Fund will: (a) Be advised by Invesco or an investment adviser controlling, controlled by, or under common control with Invesco (each such entity and any successor thereto collectively referred to as the “Adviser”) and (b) comply with the terms and conditions of the application. The Adviser may retain one or more subadvisers (each a “Subadviser”) for the Funds. Any Subadviser will be registered under the Advisers Act. For purposes of the requested order, the term “successor” is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

investment strategies while also taking advantage of the traditional benefits of ETFs (e.g., lower fund costs, tax efficiencies and intraday liquidity).

a. *Substitute Basket*. Each day a Fund would publish a basket of securities and cash that, while different from the Fund's portfolio, is designed to closely track its daily performance (the "Substitute Basket").⁶ In addition, every day the Fund would disclose the percentage weight overlap between the holdings of the prior Business Day's Substitute Basket compared to the holdings of the Fund that formed the basis for the Fund's calculation of NAV at the end of the prior Business Day (the "Basket Overlap").⁷ Such number would help market participants evaluate the risk that the performance of the Substitute Basket may deviate from the performance of the portfolio holdings of a Fund.

Applicants state that the Substitute Basket would serve as a pricing and hedging tool for market participants to identify and take advantage of arbitrage opportunities. Because the Substitute Basket would be designed to closely track the daily performance of the Fund's holdings, the Substitute Basket would serve to estimate the value of those holdings. For the same reason, trading the Substitute Basket would allow market participants to get exposure to the performance of the Fund's holdings, so that a Fund's Substitute Basket could serve to hedge a position in the Fund's Shares. Further, the Substitute Basket would generally serve as the creation/redemption basket when Authorized Participants exchange creation units with the Fund.⁸ Also in order to facilitate arbitrage, each Fund's portfolio and Substitute Basket will only include certain securities that trade on an exchange contemporaneously with

the Fund's Shares.⁹ Because the securities would be exchange traded, market participants would be able to accurately price and readily trade the securities in the Substitute Basket for purposes of assessing the intraday value of the Fund's portfolio holdings and to hedge their positions in the Fund's shares.

b. *Arbitrage Transactions in the Funds*. Applicants state that, given the correlation between a Fund's Substitute Basket and its portfolio holdings, the Substitute Basket would serve as a pricing signal to identify arbitrage opportunities when its value and the secondary market price of the Shares diverge. If Shares began trading at a discount to the Substitute Basket, an Authorized Participant could purchase the Shares in secondary market transactions and, after accumulating enough Shares to comprise a creation unit, redeem them from the Fund in exchange for a redemption basket reflecting the NAV per share of the Fund's portfolio holdings.¹⁰ The purchases of Shares would reduce the supply of Shares in the market, and thus tend to drive up the Shares' market price closer to the Fund's NAV.¹¹ Alternatively, if Shares are trading at a premium, the transactions in the arbitrage process are reversed. Applicants further state that, like with

traditional ETFs, market participants also can engage in arbitrage without using the creation or redemption processes. For example, if a Fund is trading at a premium to the Substitute Basket, the market participant may sell Shares short and take a long position in the Substitute Basket securities, wait for the trading prices to move toward parity, and then close out the positions in both the Shares and the securities, to realize a profit from the relative movement of their trading prices. Similarly, a market participant could buy Shares and take a short position in the Substitute Basket securities in an attempt to profit when Shares are trading at a discount to the Substitute Basket.

c. *Protective Conditions*. First, the Funds will provide certain public disclosures to explain to investors how they differ from traditional ETFs and inform investors that the Funds' bid-ask spreads and premiums/discounts may be larger than those for traditional ETFs due to the lack of transparency, thus making trading in the Funds' Shares more expensive. The Funds will also disclose that market participants may attempt to reverse engineer a Fund's trading strategy, which, if successful, could increase opportunities for trading practices that may disadvantage the Fund and its shareholders. Each Fund will include a legend (the "Legend") in a prominent location on the outside cover page of its prospectus, as well as on its website and any marketing materials, that will highlight for investors the differences between the Funds and fully transparent actively managed ETFs and the above costs and risk. Unless otherwise requested by the staff of the Commission, the Legend will read as follows:

This ETF is different from traditional ETFs.

Traditional ETFs tell the public what assets they hold each day. This ETF will not. This may create additional risks for your investment. For example:

- You may have to pay more money to trade the ETF's shares. This ETF will provide less information to traders, who tend to charge more for trades when they have less information.
- The price you pay to buy ETF shares on an exchange may not match the value of the ETF's portfolio. The same is true when you sell shares. These price differences may be greater for this ETF compared to other ETFs because it provides less information to traders.
- These additional risks may be even greater in bad or uncertain market conditions.
- The ETF will publish on its website each day a "Substitute Basket" designed

⁶The Funds would, at a minimum, provide the quarterly portfolio disclosures required for mutual funds. See rule 30b1-9 under the Act and Form N-PORT.

⁷ Applicants state that each Fund may strike and publish its NAV additional times during each Business Day at intervals determined by the Adviser in order to further reduce market participants' risk and to provide intraday price certainty. For example, the Fund may strike a NAV once during normal trading at 12:00 p.m. Eastern Time ("Intra-Day NAV") and again at the close of trading at 4:00 p.m. Eastern Time ("End of Day NAV").

⁸ Large broker-dealers that have contractual arrangements with an ETF (each, an "Authorized Participant") purchase and redeem ETF shares directly from the ETF, but only in blocks called "creation units." After purchasing a creation unit, the Authorized Participant may sell the component ETF shares in secondary market transactions. The redemption process is the reverse of the purchase process.

⁹Each fund may invest only in ETFs, Exchange-traded noted, Exchange-traded common stocks, common stocks listed on a foreign exchange that trade on such exchange synchronously with the Shares, Exchange-traded preferred stocks, Exchange-traded American depository receipts, Exchange-traded real estate investments trusts, Exchange-traded commodity pools, Exchange-traded metals trusts, Exchange-traded currency trusts, and exchange-traded futures that trade contemporaneously with the Shares, as well as cash and cash equivalents. For purposes of the application, exchange-traded futures are U.S. listed futures contracts where the futures contract's reference asset is an asset that the Fund could invest in directly. All futures contracts that a Fund may invest in will be traded on a U.S. futures exchange. For these purposes, an "Exchange" is a national securities exchange as defined in section 2(a)(26) of the Act. No Fund will invest in a "penny stock" as defined in Exchange Act Rule 3a51-1, borrow for investment purposes, hold short positions, or purchase any security that is illiquid at the time of purchase. The Substitute Basket will be subject to the same limitations.

¹⁰In addition to purchasing Shares, Applicants assert an Authorized Participant also would likely hedge its intraday risk by shorting the securities in the Substitute Basket (the same as in the redemption basket) in an amount corresponding to its long position in Shares. After the Authorized Participant returns a creation unit to the Fund in exchange for a redemption basket, the Authorized Participant can use the basket securities to cover its short positions.

¹¹ Applicants assert the purchase of the Shares in the secondary market, combined with the sale of the redemption basket securities, may also drive the market price of Shares and the value of the Fund's portfolio holdings closer together.

to help trading in shares of the ETF. While the Substitute Basket includes some of the ETF's holdings, it is not the ETF's actual portfolio.

The differences between this ETF and other ETFs may also have advantages. By keeping certain information about the ETF secret, this ETF may face less risk that other traders can predict or copy its investment strategy. This may improve the ETF's performance. If other traders are able to copy or predict the ETF's investment strategy, however, this may hurt the ETF's performance.

For additional information regarding the unique attributes and risks of the ETF, see section [] below.

5. Second, Applicants will comply with the requirements of Regulation Fair Disclosure ("Reg. FD") as if it applied to them, thus prohibiting the Fund's selective disclosure of any material nonpublic information.¹² Applicants note that because the Funds will not publicly disclose their portfolio holdings daily, the selective disclosure of material nonpublic information, including information other than portfolio information, would be more likely to provide an unfair advantage to the recipient than in the context of other ETFs.

6. Third, the Funds and their Adviser will take remedial actions as necessary if the Funds do not function as anticipated. For at least the first three years after launch, a Fund will establish certain thresholds for its level of Tracking Error,¹³ premiums/discounts, and spreads, so that, upon the Fund's crossing a threshold, the Adviser will promptly call a meeting of the Fund's board of directors, and will present the board with recommendations for appropriate remedial measures.¹⁴ The

¹² See 17 CFR 243. ETFs are not otherwise subject to Reg. FD. Reg. FD's Rule 100(b)(2)(iii) exempts from Reg. FD certain communications made in connection with a securities offering registered under the Securities Act. Applicants would not rely on this exemption; as the Funds will be continuously offered, this exemption would likely make the condition requiring Applicants to comply with Reg. FD meaningless.

¹³ "Tracking Error" is the standard deviation over the past three months of the daily proxy spread (*i.e.*, the difference, in percentage terms, between the Substitute Basket's per share NAV and that of the Fund at the end of the trading day).

¹⁴ For at least the first three years after launch of a Fund, its board would promptly meet (1) if the Tracking Error exceeds 1%; or (2) if, for 30 or more days in any quarter or 15 days in a row (a) the absolute difference between either the market closing price or Bid/Ask Price, on one hand, and End of Day NAV, on the other, exceeds no more than 2%, or (b) the bid/ask spread exceeds no more than 2%. A Fund may adopt additional or lower (*i.e.*, less than the 1% and 2% upper limits) thresholds to the extent deemed appropriate and approved by the Fund's board. The Board will also consider information provided by the Adviser reflecting how the Fund's Intra-Day NAV compares

board would then consider the continuing viability of the Fund, whether shareholders are being harmed, and what, if any, action would be appropriate.¹⁵ In addition, Applicants have agreed to provide to Commission staff on a periodic basis certain metrics and other such information as the staff may request in order to facilitate the staff's ongoing monitoring of the Funds.¹⁶

III. Requested Exemptive Relief

7. Applicants request an order 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, 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.¹⁷

8. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment

to the Bid/Ask Price of Shares at the time as of which the Intra-Day NAV is calculated, and will evaluate such information in the context of its oversight of the Fund.

¹⁵ For at least three years after launch of each Fund, the board will also undertake these considerations on an annual basis, regardless of whether the Fund's preset thresholds have been crossed. Potential actions may include, but are not limited to, changing lead market makers, listing the Fund on a different Exchange, changing the size of creation units, changing the construction of the Substitute Basket, changing the Fund's investment objective or strategy, and liquidating the Fund.

¹⁶ See condition 7.

¹⁷ Applicants request that the terms and conditions of the requested order apply to other registered open-end management investment companies or series thereof not advised by the Adviser ("Authorized Funds"). Applicants anticipate that the Adviser or an affiliate thereof may in the future enter into agreements concerning Applicant's intellectual property rights in the Funds with the registered investment advisers advising the Authorized Funds (together with the Authorized Funds, "Future Applicants"). Applicants further expect that Future Applicants would apply for a separate exemptive order that incorporates by reference all the terms and conditions of the requested order and any amendments thereto.

company and the general purposes of the Act.

A. Overview of Requested Relief

9. Sections 5(a)(1) and 2(a)(32) of the Act. Because the Shares will not be individually redeemable, Applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue Shares that are redeemable in creation units only.

10. Sections 17(a)(1) and (2) of the Act. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are affiliated persons, or second-tier affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of creation units and the redemption procedures for in-kind redemptions of creation units will be the same for all purchases and redemptions and basket securities will be valued in the same manner as those portfolio securities currently held by the Funds.

11. Section 22(d) of the Act and rule 22c-1 thereunder. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through a principal underwriter other than at a current public offering price described in the fund's prospectus. Rule 22c-1 under the Act requires open-end funds, their principal underwriters, and dealers in fund shares (and certain others) to sell and redeem fund shares at a price based on the current NAV next computed after receipt of an order to buy or redeem.

12. Together, section 22(d) and rule 22c-1 are designed to: (i) Prevent dilution caused by certain riskless trading practices of principal underwriters and dealers; (ii) prevent unjust discrimination or preferential treatment among investors purchasing and redeeming fund shares; and (iii) preserve an orderly distribution of investment company shares.¹⁸

13. Applicants believe that none of these concerns will be raised by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that secondary market trading in Shares does not involve the Funds as parties and cannot result in dilution of an investment in Shares, and to the extent different prices for Shares exist during a given trading day, or from day to day, such variances occur as a

¹⁸ See ETF Rule Adopting Release, *supra* note 1, at text accompanying note 116.

result of third-party market forces, such as supply and demand. Therefore, Applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, Applicants state that the proposed distribution system will be orderly because anyone will be able to sell or acquire Shares on an exchange and arbitrage activity should ensure that secondary market transactions occur at prices at or close to the Fund's NAV.

14. Section 22(e) of the Act.

Applicants seek relief from section 22(e) to permit Funds to satisfy redemption requests more than seven days from the tender of Shares for redemption with respect to foreign securities where the settlement cycle, coupled with local holiday schedules, would not permit a Fund to satisfy redemption requests within the seven days required under section 22(e) of the Act. A Fund would deliver the foreign securities as soon as practicable, but in no event later than 15 days after the tender of Shares.

B. Considerations Relating to the Requested Relief

15. In support of the requested exemptive relief, the Applicants also believe the proposed terms and conditions sufficiently address possible concerns regarding the relief, as discussed below.

16. *Proposed Arbitrage Mechanism.* Applicants believe that the proposed arbitrage mechanism can work in an efficient manner to maintain secondary market prices of Shares close to their NAV while providing investors with the opportunity to invest in active strategies through a vehicle that offers the traditional benefits of ETFs. In addition, to the extent that the Funds do not function as anticipated, Applicants have undertaken to take remedial actions as appropriate.

17. Use of Substitute Baskets.

Applicants believe they have addressed possible concerns of using a Substitute Basket as an arbitrage mechanism. First, Applicants note that a Fund's Substitute Basket would not misrepresent the Fund's holdings and that they will take steps to avoid investor confusion. To that effect, the Funds would provide disclosures in their prospectus, marketing materials and website clearly indicating the Substitute Basket's purpose and that it is not the Fund's portfolio holdings.¹⁹ Second, Applicants state that they have

structured their arbitrage mechanism so that arbitrageurs' trading will not have a significant market impact on the securities in the Substitute Basket and other Creation Baskets, in particular those that a Fund does not hold for investment purposes.²⁰

18. *Reverse Engineering.* Applicants indicate they have addressed possible concerns that other market participants may be able to reverse engineer current activity in a Fund's holdings and use such information to the disadvantage of the Fund and its shareholders. Applicants have represented 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.

IV. Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. As long as a Fund operates in reliance on the requested order, the Shares of the Fund will be listed on an Exchange.
2. The website for the Funds, which will be publicly accessible at no charge, will contain, on a per Share basis for each Fund, the prior Business Day's Intra-Day NAV and End of Day NAV and Closing Price or Bid/Ask Price of the Shares, a calculation of the premium or discount of the Closing Price or Bid/Ask Price against such End of Day NAV, and any other information regarding premiums and discounts as may be required for other ETFs under rule 6c-11 under the Act, as amended. The website will also disclose any information regarding the bid-ask spread for each Fund as may be required for other ETFs under rule 6c-11 under the Act, as amended.

3. Each Fund will include the Legend in a prominent location on the outside cover page of its prospectus, as well as on its website and any marketing materials.

4. On each Business Day, before the commencement of trading of Shares, each Fund will publish on its website the Substitute Basket and the Basket Overlap for that day.

5. No Adviser or Subadviser, directly or indirectly, will cause any Authorized

Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Instrument for a Fund through a transaction in which the Fund could not engage directly.

6. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of actively managed ETFs that disclose a proxy portfolio on each Business Day, without fully disclosing the ETF's entire portfolio at the same time.

7. Each Fund will provide the Commission staff with periodic reports (for which confidential treatment may be requested) containing such information as the Commission staff may request.

8. Each Fund and each person acting on behalf of a Fund²¹ will comply with and agree to be subject to the requirements of Regulation Fair Disclosure as if it applied to them (except that the exemptions provided in Rule 100(b)(2)(iii) therein shall not apply).

9. Each Fund will maintain and preserve, for a period of not less than five years, in an easily accessible place, (i) all written agreements (or copies thereof) between an Authorized Participant and the Fund or one of its service providers that allows the Authorized Participant to place orders for the purchase or redemption of Creation Units; (ii) a copy of the Substitute Basket published on the Fund's website for each Business Day; and (iii) a list of all creation or redemption baskets exchanged with an Authorized Participant where cash was included in the basket *in lieu* of some or all of the Substitute Basket securities (except for cash included because the securities are not eligible for trading by the Authorized Participant or the investor on whose behalf the Authorized Participant is acting), the amount of any such cash *in lieu* and the identity of the Authorized Participant conducting the transaction.

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

J. Matthew DeLesDernier,

Assistant Secretary.

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¹⁹ In addition, every day the Funds would disseminate the Basket Overlap, which would inform market participants as to the degree to which the Substitute Basket and the Fund's portfolio actually differ.

²⁰ Specifically, the Funds expect to include in the Substitute Basket only assets that are liquid and have a high trading volume. Further, Applicants note that their proposed arbitrage mechanism is not novel in this respect. Currently, arbitrageurs for fully-transparent ETFs may use securities that are not in the ETFs' portfolio to hedge their positions in the ETFs' shares.

²¹ For purposes of this condition, "person acting on behalf of a Fund" shall have the same meaning as "person acting on behalf of an issuer" for a closed-end investment company under 17 CFR 243.101(c).