

respondents<sup>7</sup>) in miscellaneous clerical expenses. The Commission estimates that the total annual burden for the filing of the supplemental information<sup>8</sup> and the monthly reports required under Rule 6a-4(c) would be 24 hours (6 hours/respondent per year × 4 respondents<sup>9</sup>) and \$240 of miscellaneous clerical expenses.

Compliance with Rule 6a-4 is mandatory. Information received in response to Rule 6a-4 shall not be kept confidential; the information collected is public information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website, [www.reginfo.gov](http://www.reginfo.gov). Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: [Lindsay.M.Abate@omb.eop.gov](mailto:Lindsay.M.Abate@omb.eop.gov); and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549 or by sending an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

Dated: November 14, 2019.

**Jill M. Peterson,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

#### New Collection:

Rule 139b; OMB Control No. New Collection, SEC File No. 270-815

Notice is hereby given that the Securities and Exchange Commission (the "Commission") has, in accordance

<sup>7</sup> The Commission notes that while there are currently five Security Futures Product Exchanges, one of those exchanges, NQLX, is dormant.

<sup>8</sup> 17 CFR 240.6a-4(c)

<sup>9</sup> See *supra* footnote 7.

with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. 3501 *et seq.*) ("PRA"), submitted a sponsored information collection request ("ICR") to the Office of Management and Budget ("OMB") for review and clearance for the collection of information associated with the new Rule 139b (17 CFR 230.139b) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) ("Securities Act") that was adopted by the Commission on November 30, 2018.<sup>1</sup> The title for this collection of information is: "Rule 139b Disclosure of Standardized Performance."

As directed by the Fair Access to Investment Research Act of 2017 (Pub. L. 115-66, 131 Stat. 1196 (2017) (the "FAIR Act"), the Commission adopted new rule 139b under the Securities Act to extend the safe harbor under rule 139 to a "covered investment fund research report." Specifically, new rule 139b provides a safe harbor to a broker-dealer who publishes or distributes in the regular course of its business research reports concerning one or more "covered investment fund(s)" while participating in the distribution of a covered investment fund's securities.

In the Proposing Release, we solicited comment on whether rule 139b should include a standardized performance disclosure requirement.<sup>2</sup> In response to comments received, we have decided to adopt such a requirement.<sup>3</sup> We believe that standardized performance presentation is an appropriate requirement because investors tend to consider fund performance a significant factor in evaluating or comparing investment companies, and the requirement addresses potential investor confusion if a communication were not easily recognizable as research as opposed to an advertising prospectus or supplemental sales literature. Rule 139b requires that research reports about open-end funds that include performance information must present it in accordance with paragraphs (d), (e), and (g) of rule 482. Rule 139b also requires that research reports about closed-end funds that include performance information must present it in accordance with instructions to item 4.1(g) of Form N-2. Performance measures calculated by broker-dealers are not required to be kept confidential and there is no mandatory retention

<sup>1</sup> See Release No. 33-10580 (Nov. 30, 2018) [83 FR 64180 (Dec. 13, 2018)] ("Adopting Release"). New rule 139b will be effective on January 14, 2019.

<sup>2</sup> See Covered Investment Fund Research Reports, Securities Act Release No. 10498 (May 23, 2018) [83 FR 26788 (June 8, 2018)] ("Proposing Release") at 26803-04.

<sup>3</sup> See Adopting Release, *supra* note I, at Section II.C.

period. We anticipate that compliance with these performance measures for each fund discussed in a research report, and for which the performance measures apply, would increase compliance costs for broker-dealers seeking to publish or distribute a covered investment fund research report.

It is difficult to provide estimates of the burdens and costs for those broker-dealers that will include performance information in a rule 139b research report. As discussed above, this is difficult to estimate because current data collected does not reflect the affiliate exclusion, does not include the entire universe of covered investment funds, and it is uncertain what percentage of communications currently filed as rule 482 advertising prospectuses (or rule 34b-1 supplemental sales materials) will instead be published in reliance of rule 139b, as covered investment fund research reports.<sup>4</sup> For purposes of the PRA, we estimate that 10% of the rule 482 and rule 34b-1 communications currently filed by broker-dealers with FINRA (approximately 65,000) could be considered as rule 139b covered investment fund research reports. We estimate that broker-dealers will publish annually 6,500 (10% of 65,000) covered investment fund research reports. Moreover, we assume for purposes of the PRA that all estimated rule 139b research reports will include fund performance information. We further estimate that 1,417 broker-dealers would likely be respondents to the collection of information with a frequency of 4.6 responses per year.<sup>5</sup> We further estimate that 50% of these broker-dealers will have experience in complying with standardized performance requirements under rule 482. For the 50% of this subset of broker-dealers that do not have experience with complying with rule 482, we estimate that there will be a one-time implementation cost for each broker-dealer of 5 internal burden hours. Additionally, we estimate that each research report will require 3 hours of ongoing internal burden hours by a broker-dealers' personnel to comply with the rule 139b collection of information requirements, which for each broker-dealer is estimated to be

<sup>4</sup> See Adopting Release, *supra* note 1, n. 413 and accompanying paragraph.

<sup>5</sup> See Adopting Release, *supra* note 1, n. 414 and accompanying text. 6,500 covered investment fund research reports/1,417 broker-dealers = 4.6 annual responses per broker-dealer.

13.8 internal burden hours.<sup>6</sup> Accordingly, we estimate that the standardized performance presentation requirements will result in an average annual hour burden of about 16.3 hours per broker-dealer<sup>7</sup> in the first year of compliance and about 13.8 hours per broker-dealer for each of the next two years. Amortized over three years, the average annual hour burden will be about 14.63 hours per broker-dealer.<sup>8</sup>

In sum, we estimate that rule 139b's requirements will impose a total annual internal hour burden of 20,731 hours on broker-dealers.<sup>9</sup> We do not think there is an external cost burden associated with this collection of information.

This information collection is subject to the PRA. If approved, responses to the new collection of information requirement would not be mandatory for broker-dealers seeking to rely upon rule 139b but would be necessary for those broker-dealers that would like to provide performance information in their covered investment fund research reports. Responses to the information collections will not be kept confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The public may view the background documentation for this information collection at the following website, [www.reginfo.gov](http://www.reginfo.gov). Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov*; and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA\_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: November 13, 2019.

**Jill M. Peterson,**

Assistant Secretary.

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<sup>6</sup> 4.6 annual responses per broker-dealer  $\times$  3 internal burden hours = 13.8 annual internal burden hours per broker-dealer.

<sup>7</sup> (50% of \* 13.8 hours ongoing compliance) + (50% \* (13.8 hours ongoing compliance + 5 hours of initial compliance hours)).

<sup>8</sup> ((16.3 internal burden hours in year 1) + (13.8 internal burden hours in year 2) + (13.8 internal burden hours in year 3)) / 3.

<sup>9</sup> 14.63 annualized burden hours \* 1,417 broker-dealers.

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33682; 812-14625]

### Blue Tractor ETF Trust and Blue Tractor Group, LLC; Notice of Application

November 14, 2019.

**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, 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. 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:** Blue Tractor Group, LLC ("Blue Tractor") and Blue Tractor ETF Trust (the "Trust").

**FILING DATES:** The application was filed on March 14, 2016, and amended on September 28, 2016, February 1, 2017, July 31, 2017, January 17, 2018, April 11, 2018, May 23, 2018, May 8, 2019, June 20, 2019, August 2, 2019, October 21, 2019, and October 23, 2019.

**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 writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 9, 2019 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 writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090;

Applicants: Blue Tractor ETF Trust, Blue Tractor Group, LLC, 57 West 57th Street 4th Floor, New York, NY 10019.

### FOR FURTHER INFORMATION CONTACT:

Deepak T. Pai, Senior Counsel; Andrea Ottomanelli Magovern, Branch Chief, at (202) 551-6821 (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 introduce a novel type of actively-managed ETF that would not be required to disclose its portfolio holdings on a daily basis (each, a "Fund"). Due to their characteristics, ETFs (including those proposed by Applicants) are only permitted to operate in reliance on Commission exemptive relief from certain provisions of the Act and rules thereunder.<sup>1</sup> 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; 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; and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and (B) 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; (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; and (e) certain registered management investment companies and unit investment trusts outside of the same

<sup>1</sup> The Commission first granted exemptive relief to operate ETFs in the early 1990s when the first index-based ETFs were developed. See SPDR Trust Series I, Investment Company Act Release Nos. 18959 (Sept. 17, 1992) (notice) and 19055 (Oct. 26, 1992) (order). See generally Exchange Traded Funds, Investment Company Act Release No. 33646 (Sept. 25, 2019) ("ETF Rule Adopting Release"), at section I. The Commission has also granted ETFs exemptive relief from Sections 12(d)(1)(A) and (B) of the Act. See generally Fund of Funds Arrangements, Investment Company Act Release No. 33329 (Dec. 19, 2018).