

Craig A. Gray  
Managing Director  
Corporate Compliance

August 22, 2013

Re: Index Changes or Modifications

Dear NYSE Arca Listed Issuer Executive:

The staff of NYSE Regulation, Inc. (“Staff”) would like to notify you of an important rule change that will affect issuers with Exchange Traded Products (“ETPs”) listed on NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”). Effective September 7, 2013, the Exchange is adding NYSE Arca Equities Rule 5.3(i)(1)(P) to specify the procedures to be followed if a listed ETP (that is, a listed Derivative Securities Product<sup>1</sup> or a listed Structured Product<sup>2</sup>) is based on an index and such index is replaced or modified.

The following summarizes the key points of the new rule, the complete text of which may be found in Exhibit A attached hereto. This summary is at all times superseded by the text of the rule.

Index-based ETPs are listed on the Exchange after either: (i) completion of an analysis of (among other things) the underlying index against the Exchange’s applicable “generic” listing standards or (ii) after Securities and Exchange Commission (“SEC”) approval of a product-specific filing by the Exchange. Once an index-based ETP is listed, issuers and index providers have occasionally found it necessary or desirable to change the index underlying such ETP or to modify the methodology used to derive and calculate the index, respectively. Rule 5.3(i)(1)(P) codifies the Staff’s long-standing policies and procedures with respect to the following changes:

1. When the value of an index on which a listed ETP is based is no longer calculated or available and a new index is substituted;
2. When an index on which a listed ETP is based is replaced with a new index from the same or a different index provider; and
3. When the index on which a listed ETP is based is significantly modified (such as a material change to the index methodology, a change in the index provider or a change in control of the index provider).

---

<sup>1</sup> The term “Derivative Securities Product” refers to ETPs listed under the following NYSE Arca Equities Rules: 5.2(j)(3) (Investment Company Units); Rule 5.2(j)(5), 8.100 (Portfolio Depository Receipts); 8.200 (Trust Issued Receipts); 8.201 (Commodity-Based Trust Shares); 8.202 (Currency Trust Shares); 8.203 (Commodity Index Trust Shares); 8.204 (Commodity Futures Trust Shares); 8.300 (Partnership Units); 8.400 (Paired Trust Shares); 8.500 (Trust Units); 8.600 (Managed Fund Shares) and 8.700 (Managed Trust Securities).

<sup>2</sup> The term “Structured Product” refers to ETPs listed under the following NYSE Arca Equities Rules: 5.2(j)(1) (Other Securities), 5.2(j)(2) (Equity Linked Notes), 5.2(j)(4) (Index-Linked Exchangeable Notes), 5.2(j)(6) (Equity-Index Linked Securities, Commodity-Linked Securities and Currency-Linked Securities, etal), 5.2(j)(7) (Trust Certificates) and 8.3 (Currency and Index Warrants).

Under the new rule, listed ETP issuers must notify the Staff at least ten business days in advance of the effective date of a change in or modification to the index on which a listed ETP is based. This notification may be made via e-mail or telephone. The Staff will review the change and will determine the documents and information, if any, that will be needed to determine compliance of the new or modified index with the NYSE Arca rules.

In most cases, the Staff will require the issuer to submit a Supplemental Listing Application (“SLAP”) to formally notify the Exchange of the change or modification as well as a certified copy of the resolution of its board (or other governing body) authorizing the change. Additionally, the Staff may require the issuer to submit a copy of the new or modified index methodology as well as a file containing the current (or pro forma) list of index components and their respective weights in the new or modified index. In certain cases, it may be necessary for the Staff to obtain written representations from the index provider regarding its policies on the protection of material non-public information regarding the index as well as the separation of the group responsible for maintaining the index from an affiliated broker/dealer, if any. Under Rule 5.3(i)(2), the listed ETP issuer may be required to announce the index change or modification via a press release.

In the event that the new or modified index is not found to be compliant with the applicable NYSE Arca “generic” standards (or if generic standards do not apply to the relevant ETP, if the new or modified index is not compliant with the terms of the SEC approval order under which that ETP was listed), the Staff will promptly contact the issuer to discuss the need to make a rule filing pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 (the “Filing”) seeking SEC approval for the continued listing and trading of the relevant ETP. In this instance, the issuer should not effectuate the index change or modification unless and until such approval is granted. If SEC approval is required and the effective date of the index change or modification precedes the SEC’s approval, the Staff will direct that trading in the ETP be halted on the effective date.

If at any time it becomes clear to the Staff that 1) the SEC will not approve the Filing; or 2) the Filing will not be allowed to become effective; or 3) the Staff decides in its sole discretion to withdraw or not to make the Filing, the Staff will immediately commence delisting procedures with respect to the ETP.

The Staff urges listed ETP issuers to provide the required notice to the Staff as early as possible in the process.

Thank you for your attention to this matter. If you have any questions or concerns, please do not hesitate to contact me at (312) 442-7832 or via e-mail to [cgray@nyx.com](mailto:cgray@nyx.com).

Yours truly,



Craig A. Gray  
Managing Director, Corporate Compliance

cc: Ms. Janice O'Neill, NYSE Regulation, Inc.  
Ms. Laura Morrison, NYSE Euronext

Additions underlined.  
Deletions [bracketed].

## NYSE Arca Equities Rules

\* \* \* \* \*

### Rule 5.3(i)(1). Financial Reports and Related Notices

Companies applying for listing enter into agreements with the Corporation and become subject to its Rules, regulations and policies applicable to listed companies. Pursuant to the listing agreement with the Corporation and the rules of the Securities and Exchange Commission under the Securities Exchange Act of 1934, each listed company is required to submit the following information and is subject to the following requirements:

(i) Reports [and], Notifications and Changes to Indices:

(A) - (O) No change

(P) This paragraph (P) sets forth procedures to be followed in relation to any listed Derivative Securities Product (as defined in Rule 5.2(j)(3)(a)(1)) or listed Structured Product (as defined in Rule 5.1(b)(17)) based on an index or portfolio of securities with respect to which: (1) the value of such index or portfolio is no longer calculated or available and a new index or portfolio is substituted; or (2) such index or portfolio is replaced with a new index or portfolio from the same or a different index provider; or (3) the index or portfolio is significantly modified (including, but not limited to, a significant modification to the index methodology, a change in the index provider or a change in control of the index provider) (each of (1), (2) or (3), a "Material Index or Portfolio Change").

In the event of a Material Index or Portfolio Change, the Corporation will not continue the listing of the applicable security unless the new (or modified) index or portfolio meets the requirements for listing of the rule under which such security was originally listed, either pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 (including the filing of a Form 19b-4(e) with the Commission) or by Commission approval of a rule filing pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934. In such circumstances, the Corporation will have sole discretion as to whether it chooses to submit a rule filing pursuant to Section 19(b)(2). If an issuer of a listed Derivative Securities Product or listed Structured Product effectuates a Material Index or Portfolio Change with respect to which approval of a rule filing pursuant to Section 19(b)(2) is required and such rule filing has not yet been approved, then the Corporation will immediately halt trading in the applicable security until such rule filing is approved. If at any time it becomes clear, in the opinion of the Corporation, that such rule filing will not be approved by the Commission or the Corporation decides in its sole discretion to withdraw or not file such rule filing, the Corporation will immediately commence delisting procedures with respect to such security.

The issuer of any listed Derivative Securities Product or listed Structured Product must notify the Corporation no fewer than ten business days in advance of the effective date of any change or modification in the index or portfolio associated with such security and, if required by the

Corporation, make application for the continued listing of the security as so changed and announce such change via a method acceptable under Rule 5.3(i)(2). Issuers are advised to consult with NYSE Regulation in advance of any Material Index or Portfolio Change which could cause the applicable security to cease to be qualified for continued listing without the approval of a rule filing pursuant to Section 19(b)(2), in which case the issuer is advised to provide adequate notice to the Corporation to provide sufficient time to obtain approval of such rule filing prior to implementation of the Material Index or Portfolio Change, thereby avoiding any disruption in trading.

\* \* \* \* \*