



NYSE Regulation
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New York, New York 10005

TO: NYSE Arca Listed Issuer Executives
FROM: NYSE Regulation
RE: Listed ETP Compliance Guidance
DATE: January 14, 2019

SUMMARY

Each year, the staff of NYSE Regulation (the “Staff”) provides a summary of policies and rules that apply to Exchange Traded Products (“ETPs”) listed on NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”). We hope that you find this information helpful and encourage you to provide a copy of this memo to appropriate executives and outside advisers who have responsibility for handling matters related to your listing on NYSE Arca. Please do not hesitate to contact the Staff with any question or concern you may have. Contact information can be found at the end of this memo.

IMPORTANT REMINDERS

Changes to Officers or Directors/Trustees

NYSE Arca [Rule 5.3-E\(i\)\(1\)\(i\)\(D\)](#) requires, among other things, that a listed issuer notify the Exchange of any change to its principal executive officers and directors (or trustees). This notification must be made promptly after the change is effected and communicated by e-mail to the Staff at etfcompliance@nyse.com. Please see page 7 for a complete discussion of the Exchange’s notice requirements regarding changes to officers or directors/trustees.

Notification of Non-Compliance with Continued Listing Standards

NYSE Arca [Rule 5.2-E\(b\)](#) requires that an ETP issuer of securities under Rule 5.2-E or Rule 8-E notify the Exchange of any noncompliance with the applicable continued listing requirements of Rule 5.2-E, Rule 5.5-E or Rule 8-E. The notification must be made by email to etfcompliance@nyse.com and include a description of the nature of the non-compliance. Please see page 7 for a complete discussion of an issuer’s obligation to notify the Exchange of any non-compliance with NYSE Arca’s continued listing standards.

NYSE Arca Immediate Release Policy

NYSE Arca [Rule 5.3-E\(i\)\(2\)](#) requires an ETP issuer to make immediate public disclosure, via a press release, of information about the issuer’s affairs or about events or conditions in the market for its securities when the information is likely to have a significant effect on the price of the securities **or** is likely to be considered important by a reasonable investor in determining a choice of action. Information regarding (i) the suspension (whether permanent or temporary) of daily creation and/or redemption activity, (ii) the liquidation of a listed ETP, or (iii) a material change in an index underlying a

listed ETP are examples of information that is considered to be material by Staff and, therefore, requires immediate public disclosure. Please see page 5 for a complete discussion of the Exchange's Immediate Release Policy, including an issuer's obligation to notify the Exchange at least ten minutes in advance of releasing material news during the Exchange's Core Trading Session.¹

AVAILABLE RESOURCES

- The complete text of NYSE Arca listing rules is available online at the following links: [Rule 5-E](#) & [Rule 8-E](#).
- This memo is available on our website [here](#).

¹ Core Trading Session is defined as 9:30 a.m. – 4:00 p.m. Eastern Time.

NYSE Arca Listed ETP Compliance Guidance Letter
January 14, 2019
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Introduction

This guidance letter was prepared to assist ETP issuers in complying with their regulatory obligations as required by the Exchange. The following rules and requirements are designed to promote full and fair disclosure by ETP issuers and to ensure investors have full and equal access to information regarding listed ETPs during market hours.

Section 1 Information Handling and Delivery Requirements

A. Dissemination of Required Values

Each ETP is listed under a specific NYSE Arca rule which dictates the type and frequency of ongoing information that must be disseminated by the issuer, its index provider and/or other reporting authority. Please contact the Staff if you are unsure of the specific NYSE Arca rule(s) that apply to your securities. If an ETP issuer becomes aware that any information is not being disseminated with the required frequency, the issuer must notify the Staff immediately (see attached contact list).

- 1) Index/Reference Asset. Generally, NYSE Arca rules require an index or reference asset to be calculated and published via one or more major market data vendors as follows:

Index/Reference Asset Type	Dissemination Frequency During NYSE Arca Core Trading Session
Domestic equities, commodities, futures or currencies	At least once every 15 seconds
International equities	At least once every 60 seconds
Fixed income securities	At least once per business day
Multi-factor securities	At least once every 15 seconds

If there is an interruption in the availability of an underlying index or reference asset value, the Staff may halt trading in the related ETP during the day in which the interruption occurs. If such interruption persists beyond the trading day in which it occurred, the Staff will halt trading in the related ETP at the beginning of the next trading day unless or until such time as values begin again to be calculated and disseminated at the required frequency. In the event that the value of the index or reference asset upon which a listed ETP is based permanently ceases to be calculated or available, NYSE Regulation will consider suspending and delisting the ETP.

- 2) Intraday Indicative Value (“IIV”). For most types of ETPs, NYSE Arca rules also require the dissemination of an IIV via one or more major market data vendors at least every 15 seconds during the NYSE Arca Core Trading session. If there is an interruption in the availability of an ETP’s IIV, the Staff may halt trading in the ETP during the day in which the interruption occurs. If such interruption persists beyond the trading day in which it first occurred, the Staff will halt the ETP at the beginning of the next trading day unless or until such time as the values begin to be disseminated the required frequency.
- 3) Net Asset Value (“NAV”). When an ETP is required to calculate and publish a daily NAV, such NAV must be made available to all market participants at the same time. In the event that the

calculation and dissemination of an ETP's NAV is not being made on the required basis, the issuer must contact the Staff immediately. Issuers finding it necessary to revise a previously disseminated NAV must first contact the Staff to discuss the materiality of the revision prior to disseminating the revised NAV. Generally, a correction that changes the previously disseminated NAV by more than 1% will be considered material and, under NYSE Arca [Rule 5.3-E\(i\)\(2\)](#), will require the issuer to issue a news release stating the corrected NAV. Staff will halt trading in the affected ETP until the news release has been disseminated.

- 4) Disclosed Portfolio. When an ETP is required to disseminate its Disclosed Portfolio, such Disclosed Portfolio must be made available to all market participants at the same time. In the event that the Disclosed Portfolio is not being made on the required basis, the issuer must contact Staff immediately. Staff will halt trading in the affected ETP until the Disclosed Portfolio is available to all market participants.

B. Information Barrier Requirements/Self-Indexing ETP Issuers

NYSE Arca rules require that when an ETP is based on an index that is maintained by a related broker-dealer (or in the case of a Derivative Securities Product, a fund adviser), the broker-dealer or fund adviser must maintain a “firewall” around the personnel that have access to information concerning changes and adjustments to the index. Additionally, any advisory committee that makes decisions on the index composition, methodology or related matters must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the index. Prior to listing an ETP based on an index maintained by a broker-dealer or fund adviser, Staff generally requires the index provider to provide a written representation regarding its firewall and/or advisory committee procedures.

C. Immediate Release Policy/Press Releases

NYSE Arca [Rule 5.3-E\(i\)\(2\)](#) requires an ETP issuer to immediately disclose information about the issuer's affairs or about events or conditions in the market for its securities when the information is likely to have a significant effect on the price of the securities **or** is likely to be considered important by a reasonable investor in determining a choice of action. Information regarding (i) the suspension (whether permanent or temporary) of daily creation and/or redemption activity, (ii) the liquidation of a listed ETP, or (iii) a material change in an index underlying a listed ETP are examples of information that is considered to be material by Staff and, therefore, requires immediate public disclosure.

Issuers are required to call the Exchange prior to releasing material information during market hours. Specifically, if such information is to be released just prior to or during the Core Trading Session, which is defined as 9:30 a.m. – 4:00 p.m. Eastern Time, the issuer must call the Exchange's Market Watch Group (**877-699-2578** or **212-656-5414**) at least ten minutes before the time the information is to be released and must concurrently provide the Exchange with a copy of the announcement via e-mail to nysealert@nyse.com. It is important that the issuer's representative making this call be knowledgeable about the details of the news being issued in case questions arise.

Please note that while an issuer must determine whether a news event is material, it is the Exchange's obligation to institute a trading halt pending dissemination of news if the Exchange believes that news is material and the issuer has not yet disclosed the news in compliance with the Exchange's timely release/material news policy. It is also the Exchange's obligation to resume trading once the news is broadly disseminated.

NYSE Arca is open for trading from 4:00 a.m. to 8:00 p.m. Eastern Time each business day. For the avoidance of doubt, NYSE Regulation has determined that halts for material news dissemination will only be effected during the Core Trading Session.

D. Information Dissemination Required for Issues Listed Pursuant to Product-Specific SEC Orders

Certain ETPs are listed on NYSE Arca pursuant to specific approval orders issued by the SEC. Issuers of such ETPs are reminded of the following information delivery obligations:

- 1) Website Disclosures. Frequently, product-specific SEC approval orders require the ongoing dissemination of specified information via the ETP issuer's website. Issuers with securities listed in this manner are reminded to ascertain whether the terms of these approvals continue to be met and to take prompt action to remediate deficiencies, if any.
- 2) Changes to Products. As most product-specific SEC approval orders are in part based on representations made by ETP issuers to the Exchange, such issuers are reminded to consult the Exchange well in advance of effecting any change to such previous representations as an updated filing may be required.

Section 2
Notifications to NYSE Regulation Staff

Note Regarding Consultation with NYSE Regulation Staff:

While ETP issuers are required to notify the Exchange when corporate action events take place, the Staff encourages issuers to consult the Staff in advance of the formal notification. By providing advance consultation, an issuer may be able to avoid non-compliance and to streamline the delivery of information to the Exchange. All conversations with Staff are confidential.

A. Suspensions and Resumptions of Ability to Redeem or Create Units

The majority of ETPs listed on NYSE Arca allows shares to be created or redeemed if certain criteria are met. A change in a holder's ability to redeem or to create units can have a material impact on the market price of the units. Accordingly, any issuer seeking to modify an ETP's creation or redemption status must notify the Staff as soon as a determination to do so has been made. The Staff will require the ETP issuer to disseminate the change in status via a press release (and, pursuant to the immediate public disclosure policy described above, may halt trading temporarily to allow the dissemination of such news).

The Exchange undertakes certain actions for ETPs that are closed to creations. Specifically, the Exchange notifies its constituents and the investing public of the change in an ETP's status by: 1) publishing a "Trader Update"; 2) changing the ETP's "Financial Status Code" which is disseminated to all major market data vendors; and 3) including the issue on its website listing of ETPs that are closed to creations (see <https://www.nyse.com/products/etp-closed-creation>).

Generally, Staff will regard the inability to redeem units of an ETP as a trigger for an immediate halt of the ETP from trading and possible delisting pursuant to NYSE Arca [Rule 5.5-E\(g\)\(2\)\(a\)\(3\)](#).

B. Notice of Material Index Change

NYSE Arca [Rule 5.3-E\(i\)\(1\)\(i\)\(P\)](#) specifies the procedures to be followed if the index underlying a listed ETP is modified or replaced. The rule requires that if any of the following changes to an index on which an ETP is based are proposed, the ETP issuer must notify Staff and must provide certain information and/or documentation:

- when the value of an ETP’s current index is no longer calculated or available and a new index is substituted;
- when an ETP’s current underlying index is replaced with a new index from the same or a different index provider; or
- when an ETP’s current index 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).

The rule further requires such notification to be delivered to the Staff no fewer than ten business days in advance of the effective date of such change. In most cases, the notification will be required to be submitted on a Supplemental Listing Application and accompanied by a resolution of the ETP issuer’s board of directors (or trustees) and the ETP issuer will be required to announce the change via a method acceptable under NYSE Arca [Rule 5.3-E\(i\)\(3\)](#) regarding material news dissemination. Failure to comply with this rule may require NYSE Arca to halt or suspend trading in the listed ETP.

C. Non-Compliance with Continued Listing Standards

NYSE Arca [Rule 5.2-E\(b\)](#) requires that an issuer of securities under Rule 5.2-E or Rule 8-E notify the Exchange of any noncompliance with the applicable continued listing requirements of Rule 5.2-E, Rule 5.5-E or Rule 8-E. The notification must be made by email to etfcompliance@nyse.com and include a description of the nature of the non-compliance. The Staff will conduct its own review and make a determination on how to proceed.

Staff has developed a list of Frequently Asked Questions (“FAQs”) that may help answer questions about the continued listing standards. This FAQs are available on the Exchange’s website at: https://www.nyse.com/publicdocs/nyse/regulation/nyse-arca/NYSE_Arca_Continued_Listing_Standards_FAQ.pdf.

D. Changes to Officers or Directors/Trustees

NYSE Arca [Rule 5.3-E\(i\)\(1\)\(i\)\(D\)](#) requires, among other things, that a listed issuer notify the Exchange of any change to its principal executive officers and directors (or trustees). This notification must be made promptly after the change is effected and communicated by e-mail to the Staff. The Staff reminds issuers that failure to provide proper notice of such changes can lead to delays in processing Supplemental Listing Applications for new ETP listings. Further, continued failure to provide proper notification can result in a non-compliance action that may require public notification.

E. Changes to Audit Committee Membership

In the absence of an exemption, NYSE Arca [Rule 5.3-E](#) requires that each listed issuer (or, where applicable, its sponsor) maintain an audit committee that complies with [Rule 10A-3](#) under the Securities Exchange Act of 1934. Each ETP issuer must notify the Staff immediately if the membership of its audit committee or the status of its exemption changes.

F. Annual Written Affirmation

The issuer of each ETP listed on the Exchange is required to comply with NYSE Arca Rules and, in certain cases, an SEC Order approving an ETP’s listing on the Exchange. NYSE Regulation monitors listed ETPs to ensure compliance with applicable Exchange rules and applicable SEC approval orders. In an effort to enhance its compliance program and to ensure that the Exchange has current information about all listed ETPs, the Exchange requires each ETP issuer to complete an Annual Written Affirmation certifying compliance with the rules and guidelines applicable to its listed ETPs.

The Annual Written Affirmation must be submitted to the Exchange by December 31 each year. ETP issuers that share the same board of directors or have identical boards of directors may submit a single Annual Written Affirmation provided that the name of each issuer is included on the form.

Staff has developed a list of Frequently Asked Questions (“FAQ”) that may help answer questions about the Annual Written Affirmation and submission process. This FAQ list, as well as the current Annual Written Affirmation form, is available on the Exchange’s website at:

<https://www.nyse.com/regulation/nyse-arca>.

Section 3
Other Notifications to the NYSE

Note: As detailed below, certain notifications may now be submitted directly to NYSE Corporate Actions or to the Exchange’s Market Watch Group for efficient processing. In these cases, confidential advance consultation with the responsible group will help ensure the proper timing of events and publication of information.

A. Record Date Notification Requirements and Policies

NYSE Arca [Rule 5.3-E\(i\)\(1\)\(i\)\(H\)](#) requires ETP issuers to notify the Exchange at least ten calendar days in advance of any record dates set for any purpose. The following are key NYSE policies regarding record dates:

- Record dates should not be set on a Saturday, Sunday or Exchange holiday. In rare situations where the terms of a security mandate a record date that falls on a Saturday, Sunday or Exchange holiday, the issuer’s announcement should make clear that the effective record date is the immediately preceding U.S. business day.
- Publication of a record date by means of a press release or SEC filing does not constitute notice to the Exchange.
- If an ETP issuer changes a record date, it must provide another advance notice of at least ten calendar days. Strict compliance with the record date notification rules is essential to avoid situations where the date for a shareholder meeting, dividend or other corporate actions must be reset.

B. Shareholder Meeting Dates

When a listed ETP issuer finds it necessary or desirable to hold a shareholder meeting, the Exchange recommends at least a 30-calendar day interval between the record date and the meeting date. Notifications of shareholder meeting dates should be directed to the Exchange’s Market Watch Group at proxyadmin@nyse.com or **877-699-2578**.

C. Notice of Upcoming Dividend Payments

NYSE Arca [Rule 5.3-E\(i\)\(1\)\(i\)\(H\)](#) requires all listed issuers to provide notice of a dividend payment at least ten **calendar** days prior to record date. To meet this requirement, NYSE Arca requests that issuers provide a schedule of anticipated dividend dates as soon as such are determined. If no set schedule is provided, an issuer must provide notice of each record date at least ten calendar days in advance. The e-mail address for submission of the anticipation schedule and notice of record date is dividend.submission@nyse.com. Dividend notifications can be submitted electronically through [Listing Manager](#). Please contact NYSE & Arca Business Operations if you have any questions regarding dividend submission methods and timing.

D. Submission of Supplemental Listing Applications

A listed ETP issuer is required to submit an executed Supplemental Listing Application and obtain authorization from NYSE Corporate Actions prior to the effective date of certain corporate action events including (but not limited to) changes in a listed ETP's name, CUSIP and/or ticker symbol, stock splits (whether forward or reverse) and re-organizations.

In support of such application, the NYSE Corporate Actions group generally requires a certified copy of the board resolution authorizing the action. In many cases, issuance of a press release is also required. Staff recommends that a Supplemental Listing Application be forwarded to NYSE Corporate Actions as soon as an ETP issuer's board approves a transaction.

E. Notice of Redemption, Cancellation, or Retirement of a Listed ETP

Pursuant to NYSE Arca [Rule 5.3-E\(i\)\(1\)\(i\)\(E\)](#), a listed issuer must notify the Exchange at least fifteen **calendar** days in advance of a call for redemption, cancellation, or retirement of any listed security. Liquidations of ETPs fall under this requirement and can be made directly to NYSE Corporate Actions.

When an issuer determines to call or to liquidate a listed ETP, NYSE Corporate Actions requires a formal written notice regarding the intent to liquidate, a certified resolution of the issuer's board authorizing the action and the issuance of a press release regarding the liquidation. It is recommended that a listed issuer contact NYSE Corporate Actions to discuss the planned timeline prior to release of the information to the public.

Advance notice of redemption is not required for listed ETPs containing terms that provide for the automatic redemption (or "knockout") of such ETP if certain thresholds are met. However, in these cases, even though such thresholds are described in an ETP's prospectus and/or pricing supplement, when an automatic redemption is triggered the ETP issuer must follow the Exchange's Immediate Public Disclosure Policy and promptly issue a press release notifying investors of the automatic redemption. The Exchange may implement a temporary trading halt in the affected ETP to permit dissemination of the information, particularly if the ETP has been trading at a significant premium or discount to its redemption value. Once the news is disseminated, the Exchange will continue trading in the issue until the opening of business on the accelerated maturity date.

NYSE ARCA LISTING CONTACTS

NYSE Regulation	
Group e-mail: etfcompliance@nyse.com	Patrick Troy Patrick.Troy@theice.com 212-656-4522
	Craig Gray Craig.Gray@theice.com 312-836-6579
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	Press Releases nysealert@nyse.com 877-699-2578 or 212-656-5414
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