



FAQ on NYSE Arca Annual Written Affirmation (“AWA”)

General

Q: Why is NYSE Regulation requiring issuers to complete the AWA?

A: NYSE Regulation staff (“Staff”) seeks to ensure that it has complete and current information regarding each issuer’s board of directors and listed ETPs.

Q: Is there an NYSE Arca rule that requires an AWA for each issuer?

A: No specific NYSE Arca rule requires an AWA; however, Staff notes that NYSE Arca Rule 5.3-E(i)(1) allows the Exchange to reasonably require issuers to provide information:

“Companies applying for listing enter into agreements with the Exchange and become subject to its Rules, regulations and policies applicable to listed companies. Pursuant to the listing agreement with the Exchange 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...

“(O) The Company shall furnish the Exchange any other information concerning its business as the Exchange may reasonably require.”

Q: We have several issuing trusts that share the same board of trustees/directors. Do we need to file a separate AWA for each trust?

A: No. Listed issuers that share the same board or have identical boards may submit a single AWA provided that the name of each issuer is included on the form.

Q: Who is authorized to sign the AWA?

A: Any executive officer or comparable level executive of the issuing entity, its sponsor or managing owner with the knowledge and authority to provide the required information to the Staff may sign the AWA.

Q: Is there a required format or file name for submission of the AWA and related exhibits?

A: Yes. Staff requests that the AWA be submitted in Adobe Acrobat (“.pdf”) form and that the exhibits be submitted in separate Microsoft Excel files. Each file should be submitted with a file name that begins with the issuer’s name and contains the submission date. If necessary, files may be submitted in compressed format.

Q: What is the due date for the AWA and related exhibits? How do we deliver these documents and files?

A: Listed ETP issuers are expected to submit a completed AWA and provide required exhibits no later than December 31, 2018. Filings should be submitted via e-mail to etfcompliance@nyse.com.



Section A--Board of Trustees/Directors and Audit Committee/Rule 10A-3 Compliance

Q: One or more of our listed ETPs is issued by a passive trust that does not have a board of directors and is exempt from Rule 10A-3 under the Securities Exchange Act of 1934. How do I complete this form?

A: Unmanaged passive trusts that are able to rely on the exemption in Rule 10A-3(c)(7) should check Box 2 in Section A. Issuers that rely on a different exemption to Rule 10A-3 should check Box 3 in Section A and enter details regarding the exemption in the box provided on page 1 of the form. In those cases, completion of Exhibit A is not required.

Section B--Listed Securities

Q: We have some ETPs in each category described in Section B. For example, some of our listed ETPs are self-indexed while others are not. How do we complete Section B?

A: Each statement in Section B should be considered independently. In the case described, both Box 1 and Box 2 should be answered--Box 1 applies to all indexed ETPs from the same issuer (or issuer family) while Box 2 applies only to those funds that are self-indexed. Staff notes that Exhibit B allows an issuer to distinguish among ETPs that are self-indexed and/or approved via an SEC order.

Q: One or more of our actively managed ETFs is managed by a sub-adviser. Do we need to consider the sub-adviser's compliance program when deciding how to respond to statement #5?

A: Yes. NYSE Regulation expects issuers of actively managed ETFs that use a sub-adviser to be certain that the sub-adviser has an appropriate program in place that will prevent or capture and correct any non-compliance with the terms of the Form 19b-4 or SEC approval order or the continued listing standards set forth under NYSE Arca Rule 8.600-E.

Q: What should we do if we can't affirm one of the statements and we can't check "N/A"? What if this situation applies to only one of our listed ETPs but not to others?

A: If a statement in Section B cannot be affirmed for one or more ETPs, do not check either box related to that statement. Rather, describe the situation in the box provided (or in a supplemental document, if required), including a statement affirming compliance of all other ETPs (if any).

Q: Can any of the statements contained in the AWA be modified?

A: No. Modification of the statements is not permitted and should not be necessary. However, if you have a question or concern regarding a statement or its applicability to a listed ETP, please contact the Staff to discuss.



Exhibits

Q: Do we need to use the templates provided to complete the exhibits?

A: Yes. To ensure consistency, Staff requests that the templates be used to complete the exhibits.

Q: Do all columns of each template need to be provided?

A: Yes, please provide a spreadsheet containing each of the specified columns in the template. However, if a particular column does not apply to the ETP, it may be left blank or marked "N/A".

Other Questions

Q: Who can answer our additional questions?

A: Additional questions may be directed to the Staff using the following contact information:

Via e-mail to: etfcompliance@nyse.com

Craig Gray
Manager
craig.gray@theice.com
(312)836-6579

Erin Manahan
Lead Analyst
erin.manahan@theice.com
(212)656-4135

James Hunter
Senior Analyst
james.hunter@theice.com
(212)656-4521