



To: NYSE Arca Listed Issuers
From: NYSE Regulation
Date: December 11, 2017
Re: Exchange Traded Fund Continued Listing Rules

Overview:

Beginning on January 1, 2018, all exchange-traded funds (“ETFs”) listed on NYSE Arca, Inc. (the “Exchange”) will be subject to certain additional rules for continued listing on the Exchange, as approved by the Commission on March 9, 2017. Such new continued listing rules will generally require ETFs listed on the Exchange to meet certain requirements on an ongoing basis, including requirements related to index, portfolio or reference asset composition.

The Exchange is publishing these FAQs in order to provide ETF issuers with guidance as to how the new continued listing rules will be interpreted and applied.

FAQs

1. What is required for an ETF that tracks the performance of an index to comply with the new continued listing standards?

Under the new continued listing standards, an index tracked by an ETF must meet applicable composition requirements on an ongoing basis. To ensure continued compliance, issuers shall test that an index meets such composition requirements as of each date on which the index is rebalanced, reconstituted or undergoes a material change, as applicable, and otherwise no less frequently than on a quarterly basis.

Issuers may establish their own quarterly testing schedule, whether based on the fiscal year-end of the ETF, the calendar quarters, or otherwise.

2. What is required for an ETF that was listed pursuant to a 19b-4 Approval Order to comply with the new continued listing standards?

If the ETF tracks an index that did not meet the generic listing requirements at the time of initial listing, the index composition must satisfy the requirements specified in the applicable Approval Order on an ongoing basis. To ensure continued compliance, issuers shall test that an index meets such composition requirements as of each date on

which the index is rebalanced, reconstituted or undergoes a material change, as applicable, and no less frequently than on a quarterly basis.

If the ETF is actively managed and was listed pursuant to a 19b-4 Approval Order, the fund portfolio must satisfy the composition requirements specified in the applicable Approval Order on a daily basis. For example, if a fund's Approval Order states that the fund will hold no more than 20% of the fund's assets in over-the-counter derivative securities, the fund's portfolio must comply with this requirement as of the time it calculates its Net Asset Value each trading day.

3. Can an issuer of an index-based ETF comply with the continued listing standards if the ETF's portfolio, rather than the index that it tracks, complies with rules?

No. In order to comply with the continued listing standards, the index on which the ETF is based must comply with applicable rules.

4. When an ETF issuer becomes aware of non-compliance, what type of notification is required to the Exchange?

An issuer that determines that an ETF is not in compliance with the continued listing rules as a result of the testing described in FAQ 1 and 2, above, must promptly notify the staff of NYSE Regulation by e-mail at etfcompliance@nyse.com and describe the nature of the non-compliance. Upon receipt, the Staff will conduct its own compliance review and make a determination on how to proceed.

5. In the event of non-compliance, what period of time will issuers be afforded for the ETF to regain compliance?

Each instance of non-compliance will be evaluated on a case-by-case basis depending on the particular facts and circumstances of the event. In determining whether to grant a compliance period, the Exchange will consider the degree of non-compliance, the expected period of time needed to regain compliance and any other factors it deems relevant. Generally, if an ETF is non-compliant because its underlying index no longer complies with the generic listing rules or the terms of its 19b-4 Approval Order, the Exchange expects that the index will regain compliance on the next succeeding rebalance date. ETF issuers are reminded that if they elect to cure an event of index non-compliance by replacing the index tracked by a particular ETF, they are obligated to notify the Exchange at least ten days prior to the date on which such replacement will

occur.

An actively managed ETF that becomes non-compliant with the terms of its 19b-4 Approval Order or the generic listing rules for actively managed ETFs, as the case may be, will be required to submit a written plan detailing how it intends to regain compliance with applicable rules. If the plan is accepted, the Exchange will afford the issuer a period of time to regain compliance. Such compliance plan may be truncated by the Exchange, in its sole discretion, at any time. If the ETF has not regained compliance by the conclusion of the compliance plan period, it will be subject to delisting.

In all instances, a below compliance indicator will be affixed to the ticker symbol of a noncompliant ETF from the date that it is deemed to be below compliance until the date that the ETF has cured such non-compliance. If an issuer is unable to cure its non-compliance and does not elect to voluntary delist, the Exchange will commence delisting proceedings.

Once notified that an ETF is out of compliance with the continued listing standards, issuers are advised to consult with counsel as to whether any public disclosure is required.

6. What happens if the ETF will be unable to regain compliance with applicable generic listing rules or the terms of its 19b-4 Approval Order and it is necessary to file a new 19b-4 with the Securities and Exchange Commission (the “Commission”)?

In the event that an ETF is non-compliant and is unable to regain compliance with the generic listing rules or 19b-4 Approval Order applicable to it, the Exchange, in its sole discretion, may file a rule proposal with the Commission to permit the continued listing and trading of the impacted security. If at any time it becomes clear, in the opinion of the Exchange, that such rule proposal will not be approved by the Commission, will not be allowed to take effect, or if the Exchange decides to withdraw or not file such rule proposal, the relevant ETF may voluntarily delist or will be subject to Exchange delisting action.

A below compliance indicator will be affixed to the ticker symbol of a noncompliant ETF from the date that it is deemed to be below compliance until the rule proposal has been approved by the Commission and taken effect.

Once notified that an ETF is out of compliance with the continued listing standards, issuers are advised to consult with counsel as to whether any public disclosure is required.

7. How will the Exchange monitor for compliance with the continued listing rules?

On an annual basis, ETF issuers will be required to submit a written attestation that all listed ETFs comply with applicable continued listing rules and that the issuer has been conducting compliance tests in accordance with the guidance provided herein.

Although issuers will not be required to provide their quarterly testing results to the Exchange, the Exchange will periodically test indices and portfolios on a randomized basis. ETF issuers will be required to submit index or portfolio files to the Exchange (in a format acceptable to the Exchange) upon request.