



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 19, 2022

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”) to assist ETP issuers in complying with their regulatory obligations. 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

Preparation of Public Announcements - See page 6

NYSE Arca [Rule 5.3-E\(i\)\(4\)](#) requires that a press release or other public announcement clearly state the action and timing to allow investors to evaluate its relative importance to the activities of the issuer.

Notification of Non-Compliance with Continued Listing Standards - See page 7

NYSE Arca [Rule 5.2-E\(b\)](#) requires that an ETP issuer of securities to promptly notify the Exchange if it becomes aware of any non-compliance with the continued listing requirements. The notification must be made by email to etfcompliance@nyse.com.

Changes to Officers or Directors/Trustees - See page 8

NYSE Arca [Rule 5.3-E\(i\)\(1\)\(i\)\(D\)](#) requires that a listed issuer promptly notify the Exchange of any change to its principal executive officers and directors (or trustees). Changes to an issuer’s officers must be communicated by e-mail to the Staff at etfcompliance@nyse.com. Changes to an issuer’s Board of Directors/Trustees must be entered into [Listing Manager](#) by completing a Board Update.

Timely Submission of Supplemental Listing Applications - See page 7

NYSE Arca [Rule 5.2-E\(a\)](#) and [Rule 5.3-E\(i\)\(1\)\(i\)\(N\)](#) requires that a listed ETP issuer provide an application to the Exchange for the listing of securities or other corporate action. The Exchange requests **at least ten business** days to review and authorize all Supplemental Listing Applications. All Supplemental Listing Applications must be submitted through [Listing Manager](#).

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](#).

NYSE Arca Listed ETP Compliance Guidance Letter
January 19, 2022
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Section 1
Information Handling and Delivery Requirements

A. Dissemination of Required Values

Each ETP is listed under a specific NYSE Arca rule that 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. When NYSE Arca rules require an index or reference asset to be calculated and published via one or more major market data vendors, the required dissemination frequency is generally 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”). When an ETP is required to calculate and publish an IIV, NYSE Arca rules 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 an IIV begins to be disseminated at the required frequency.
- 3) Verified Intraday Indicative Value (“VIIV”). When an ETP is required to calculate and publish a VIIV (as defined in NYSE Arca Rule 8.900-E), NYSE Arca rules require the dissemination of a VIIV via one or more major market data vendors in one second intervals during the NYSE Arca Core Trading session. If the Exchange becomes aware that the VIIV is not being calculated or disseminated in one second intervals, as required, it will halt trading in ETP until such time as a VIIV begins to be disseminated at the required frequency.
- 4) 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. An Issuer 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.

- 5) Portfolio Holdings. When an ETP is required to disseminate its portfolio holdings, such portfolio holdings must be made available to all market participants at the same time. In the event that the portfolio holdings are not being made on the required basis, the issuer must contact Staff immediately. Staff will halt trading in the affected ETP until the portfolio holdings are made 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 making an investment decision. An ETP issuer must use its own discretion to determine whether information is material, but the Exchange should be consulted if there is any uncertainty. Examples of information that is considered to be material by Staff and, therefore, require immediate public disclosure are (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.

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 electronically through [Listing Manager](#) or 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. Preparation of Public Announcements

NYSE Arca [Rule 5.3-E\(i\)\(4\)](#) requires, among other things, that the content of a press release or other public announcement contain facts that are clear and succinct. Any announcement should clearly state the action and timing to allow investors to evaluate its relative importance to the activities of the issuer. The omission of important unfavorable facts, or the slighting of such facts (e.g., by "burying" them at the end of a press release) should be avoided.

E. Information Dissemination Required for Issuers 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 to ascertain whether the terms of these approvals continue to be met and to take prompt action to remediate deficiencies, if any.

- 1) Website Disclosures. Product-specific SEC approval orders may require the ongoing dissemination of specified information via the ETP issuer's website, including, but not limited to, the Proxy Portfolio and Actual Portfolio (as defined in NYSE Arca Rule 8.601-E) or daily portfolio holdings.
- 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 no fewer than ten business days before effecting any change to such previous representations. NYSE Arca [Rule 5.3-E\(i\)\(1\)\(i\)\(P\)](#) requires, among other things, that if an issuer of an ETP effectuates a material index or portfolio change that requires the filing of a proposed rule change with the SEC pursuant to Section 19(b)(1) and such rule filing has not yet been approved or has not yet taken effect (as applicable), then the Exchange will immediately halt trading in the applicable security until such rule filing is approved or takes effect.

Section 2
Notifications to NYSE Regulation Staff

While ETP issuers are required to notify the Exchange about certain events, 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 allow 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

ETP issuer will be required to announce the change in status via a method acceptable under NYSE Arca [Rule 5.3-E\(i\)\(3\)](#) regarding material news dissemination. Staff 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) changing the ETP's "Financial Status Code" which is disseminated to all major market data vendors; and 2) 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\(m\)](#).

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 result in a halt or suspension of 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](#) promptly notify the Exchange if it becomes aware 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.

D. Submission of Supplemental Listing Applications

NYSE Arca [Rule 5.2-E\(a\)](#) and [Rule 5.3-E\(i\)\(1\)\(i\)\(N\)](#) require that a listed ETP issuer provide an application to the Exchange for the listing of securities or other corporate action, 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. A listed ETP issuer is required to submit a Supplemental Listing Application and obtain authorization from the Exchange prior to the effective or listing date of such event. Staff recommends that a Supplemental Listing Application be submitted as soon as an ETP

issuer's board approves a transaction, but such notification is required **no later than ten business days** before the effective or listing date of such event. Supplemental listing applications can be submitted electronically through [Listing Manager](#).

E. 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 takes effect. Changes to an issuer's principal executive officers must be communicated by e-mail to the Staff at etfcompliance@nyse.com. Changes to an issuer's Board of Directors/Trustees must be entered into [Listing Manager](#) by completing a Board Update. 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.

F. Changes to Independent Registered Public Accounting Firm

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 independent public accountants. This notification must be made promptly after the change takes effect and be communicated by e-mail to the Staff at etfcompliance@nyse.com.

G. 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. An ETP issuer must promptly notify the Staff by e-mail at etfcompliance@nyse.com if the status of its [Rule 10A-3](#) exemption changes. Changes to an issuer's audit committee composition must be entered into [Listing Manager](#) by completing a Board Update.

H. 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 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.

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. The Annual Written Affirmation must be submitted to the Exchange by December 31 each year and can be submitted electronically through [Listing Manager](#).

The Staff has developed a list of Frequently Asked Questions ("FAQ") regarding the Annual Written Affirmation and submission process. These FAQs are 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 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 date 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 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 can be submitted through [Listing Manager](#) or by contacting the 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. The Staff 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 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. 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 notifications 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 Release 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 ETP until the opening of business on the accelerated maturity date.

NYSE Arca Listing Contacts

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|--|--|
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| Market Watch & Proxy Compliance |
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| Shareholder Meeting Dates proxyadmin@nyse.com 877-699-2578 or 212-656-5414 |

NYSE Arca Business Operations

Dividend Submissions

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