

TO: NYSE Arca Listed ETP Issuer Executives
FROM: NYSE Regulation
RE: Compliance Guidance for NYSE Arca Listed ETPs
DATE: January 18, 2023

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.

WHAT'S NEW

NYSE ETP Listings are now available

Since 2008, ETPs choosing to list with the NYSE Exchanges have exclusively been listed on NYSE Arca, our electronic marketplace. The NYSE rules were recently updated to permit ETPs to be traded on the NYSE trading floor. The NYSE listing rules for ETPs are in almost all cases identical to those of NYSE Arca. Issuers seeking to list or transfer ETPs to the NYSE should expect a seamless transition with respect to listing rule compliance. The Staff notes that the reminders described in this letter also generally apply to ETPs listed on the NYSE.

IMPORTANT REMINDERS

Content and Dissemination of Public Announcements - see page 4

NYSE Arca [Rule 5.3-E\(i\)\(4\)](#) requires that a press release or other public announcement clearly state the action and timing of any event to allow investors to evaluate its relative importance to the activities of the issuer. NYSE Arca [Rule 5.3-E\(i\)\(3\)](#) provides that required public announcements may generally be made via any Regulation FD compliant method.

Notification of Non-Compliance with Continued Listing Standards - see page 8

NYSE Arca [Rule 5.2-E\(b\)](#) requires that a listed ETP issuer promptly notify the Exchange if it becomes aware of any non-compliance with the applicable 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 ETP 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 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 Listing Applications - see page 8

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 and other corporate actions. The Exchange requests **at least ten business** days to review all Listing Applications. All Listing Applications and supporting documentation 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](#) and [Rule 8-E](#).
- General information regarding NYSE Arca's ETP Regulation Program can be found online on our website [here](#).
- This memo is available on our website [here](#).

NYSE Arca Listed ETP Compliance Guidance Letter
January 18, 2023
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Section 1 Information Handling and Delivery Requirements

A. Immediate Release Policy

NYSE Arca [Rule 5.3-E\(i\)\(2\)](#) requires a listed ETP issuer to immediately disclose information (or "news") about the issuer's affairs or about events or conditions in the market for its securities if such information is "material"; that is, it is likely to have a significant effect on the price of the listed securities **or** likely to be considered important by a reasonable investor in making an investment decision. While an ETP issuer must use its own discretion to determine whether information is material, the Staff should be consulted if there is any uncertainty. Examples of information considered to be material by Staff (and, therefore requiring immediate public disclosure) are: (i) the permanent or temporary suspension of daily creation and/or redemption activity, (ii) the liquidation of a listed ETP, or (iii) a significant change in an index underlying a listed ETP.

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 information being issued in case any questions arise.

Please note that while an issuer must determine whether information is material, it is the Exchange's obligation to institute a trading halt, pending dissemination of such information in compliance with the Exchange's immediate release policy, if the Exchange believes the information is material. The Exchange will resume trading once the information 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.

B. Content and Dissemination of Public Announcements

NYSE Arca [Rule 5.3-E\(i\)\(4\)](#) requires, among other things, that the content of a public announcement (via press release or otherwise) contain facts that are clear and succinct. Any announcement should clearly state the action and timing of an event 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), should be avoided.

NYSE Arca [Rule 5.3-E\(i\)\(3\)](#) requires that listed ETP issuers disclose material information to the public via a Regulation FD compliant method (or combination of methods). Investment Company Act registrants (other than closed end funds) are not required to comply with Regulation FD, but such Investment Company Act registrants may comply with the Exchange's immediate release policy by any method (or combination of methods) that would constitute compliance with Regulation FD for a domestic U.S. issuer subject to the Securities Exchange Act of 1934. While not requiring them to do so, the Exchange encourages listed ETP issuers to comply with the immediate release policy by issuing press releases.

Any public disclosure of material information made by means of a press release should be released to the major news wire services, including, at a minimum, Dow Jones & Company, Inc., Reuters Economic Services and Bloomberg Business News.

A listed ETP issuer choosing to comply with the immediate release policy by disseminating information on its website or via social media must comply with the SEC's guidelines applicable to Regulation FD communication via websites or social media.

C. Dissemination of Required Information

NYSE Arca rules mandate the type and frequency of ongoing information that must be disseminated by a listed ETP 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). The following describes the Staff's key policies with regard to certain types of information:

- 1) Net Asset Value ("NAV"). If 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 available on the required basis, the issuer must contact the Staff immediately.

An ETP 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.

- 2) Portfolio Holdings. If 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.
- 3) Website Data Requirements. If an ETP is listed under NYSE Arca [Rule 5.2-E\(j\)\(8\)](#), it is subject to the specific ongoing website disclosure requirements defined in Rule 6c-11 of the 1940 Act. Staff periodically reviews such ETPs for compliance with these requirements. Failure to comply with such requirements or to correct website deficiencies promptly may result in a non-compliance action.

Staff encourages each listed ETP issuer to periodically review its website data to ensure it is accurate and complete. In particular, Staff encourages periodic review of premium and discount tables and graphs. Staff further encourages each listed ETP issuer to ensure that its portfolio disclosure contains all required fields (ticker symbol (if any), CUSIP or other identifier, description of each holding, quantity held, and percentage weight of each holding with respect to the ETP's portfolio).

- 4) Intraday Indicative Value ("IIV"). If an ETP is required to calculate and publish an IIV, NYSE Arca rules require the dissemination such 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 trading in 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.

- 5) Verified Intraday Indicative Value (“VIIV”). If an ETP is required to calculate and publish a VIIV (as defined in NYSE Arca [Rule 8.900-E](#)), NYSE Arca rules require that such VIIV be disseminated 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 the ETP until such time as a VIIV begins to be disseminated at the required frequency.
- 6) Index/Reference Asset. If 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 first occurred, the Staff will halt trading in the ETP at the beginning of the next trading day unless or until such time as values begin 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.

D. Information Barrier Requirements/Self-Indexing ETP Issuers

If an ETP is based on an index that is maintained by a related broker-dealer or fund adviser), NYSE Arca rules require that the broker-dealer or fund adviser maintain a “firewall” around the personnel that have access to information concerning changes and adjustments to the index. Additionally, any advisory committee (or similar entity) 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.

E. Information Dissemination 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 periodically evaluate whether the terms of the relevant approval continues 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 to the Exchange, issuers of a listed ETP are reminded to consult the Exchange no fewer than ten business days before effecting any change to previous representations. NYSE Arca [Rule 5.3-E\(i\)\(1\)\(i\)\(P\)](#) requires, among other things, that if an ETP issuer 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 listed 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 engaging with the Staff in advance, 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, an ETP issuer seeking to modify an ETP's creation or redemption status must notify the Staff by e-mail at etfcompliance@nyse.com as soon as a determination to do so has been made. An ETP issuer will be required to announce the change in status via a method acceptable under NYSE Arca [Rule 5.3-E\(i\)\(3\)](#). Staff may halt trading temporarily to allow the dissemination of such news. Generally, Staff will regard the inability to redeem units of an ETP as a trigger for an immediate trading halt of the ETP and possible delisting pursuant to NYSE Arca [Rule 5.5-E\(m\)](#).

The Exchange undertakes certain actions if a listed ETP is 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>).

B. 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:

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

- if 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. The notification must be made by email to etfcompliance@nyse.com and include a description of the 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 must announce the change via a method acceptable under NYSE Arca [Rule 5.3-E\(i\)\(3\)](#) regarding material news dissemination. Supplemental Listing Applications and supporting documents must be submitted electronically through [Listing Manager](#). 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 non-compliance 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 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 and supporting documents must 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 ETP 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 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 ETP issuers that failure to provide proper notice of such changes can lead to delays in processing Supplemental Listing Applications. Further, continued failure to provide proper notification can result in a non-compliance action that may require public notification.

F. Changes to Audit Committee Membership

In the absence of an exemption, NYSE Arca [Rule 5.3-E](#) requires that each listed ETP issuer (or, where applicable, its sponsor) maintain an audit committee that complies with [Rule 10A-3](#) under the Securities Exchange Act of 1934. Changes to an issuer's audit committee composition must be entered into [Listing Manager](#) by completing a Board Update. If an exemption has applied, the ETP issuer must promptly notify the Staff by e-mail at etfcompliance@nyse.com if the status of its exemption changes.

G. Changes to Independent Registered Public Accounting Firm

NYSE Arca [Rule 5.3-E\(i\)\(1\)\(i\)\(D\)](#) requires, among other things, that a listed ETP 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.

H. Annual Written Affirmation

NYSE Regulation monitors listed ETPs for compliance with applicable Exchange rules and SEC approval orders. To ensure that the Exchange has current information about all of its 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.

Listed 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 must 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>.

I. Record Dates

NYSE Arca [Rule 5.3-E\(i\)\(1\)\(i\)\(H\)](#) requires listed ETP issuers to notify the Exchange at least ten calendar days in advance of any record date set for any purpose. 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. 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.

Such information regarding record dates must be submitted to NYSE Corporate Actions at corporateactions@nyse.com.

J. Shareholder Meeting Dates

If 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**.

K. Upcoming Dividend Payments

NYSE Arca [Rule 5.3-E\(i\)\(1\)\(i\)\(H\)](#) requires all listed ETP 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 ETP

issuer must provide notice of each dividend payment 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 also can be submitted electronically through [Listing Manager](#). Please contact NYSE Arca Business Operations if you have any questions regarding dividend submission methods and timing.

L. Redemption, Cancellation, or Retirement of a Listed ETP

Pursuant to NYSE Arca [Rule 5.3-E\(i\)\(1\)\(i\)\(E\)](#), a listed ETP 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 at corporateactions@nyse.com.

If an issuer determines to call or to liquidate a listed ETP, NYSE Corporate Actions requires a formal written notice regarding the intent to liquidate, including a certified resolution of the issuer's board authorizing the action. Disclosure of the liquidation is also required under the Immediate Release Policy (as described above). It is recommended that a listed ETP 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, if an automatic redemption is triggered the ETP issuer must follow the Exchange's Immediate Release Policy and promptly disclose 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.

Contact Information

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NYSE Arca Business Operations

Dividend Submissions

dividend.submission@nyse.com

212-656-5438