

Frequently Asked Questions – New Continued Listing Rules

Beginning on January 1, 2018, all exchange-traded products (“ETPs”) listed on Cboe BZX Exchange, Inc. (the “Exchange”) will be subject to certain additional rules for continued listing on the Exchange, as [approved by the Commission](#) on March 7, 2017 (the “New Continued Listing Rules”). Such New Continued Listing Rules will generally require ETPs listed on the Exchange to meet certain standards on an ongoing basis, including index, portfolio, or reference asset composition requirements (the “Listing Standards”) that had previously only been applicable to such ETPs upon initial listing on the Exchange.

The Exchange is publishing these FAQs in conjunction with the submission of an [interpretive rule filing](#), which became effective on September 29, 2017, in order to provide issuers with guidance as to how the New Continued Listing Rules will be implemented and applied.

General

1. What are the New Continued Listing Rules?

Under the New Continued Listing Rules, each ETP listed on the Exchange must meet certain applicable Listing Standards on an ongoing basis and the Exchange will initiate delisting proceedings where any of the Listing Standards are not met. Under the New Continued Listing Rules, issuers should test each ETP’s underlying index, portfolio, and/or reference asset for compliance with the Listing Standards.

2. Where can the New Continued Listing Rules and Listing Standards be found?

The New Continued Listing Rules can be found in [Exchange Rule 14.11](#) and the Listing Standards for each type of ETP can be found under the applicable subparagraph of Rule 14.11. For example, the Listing Standards for Index Fund Shares based on an index of U.S. component stocks can be found in Rule 14.11(c)(3)(A)(i).

- 3. How do the New Continued Listing Rules apply to ETPs approved for listing and trading pursuant to a rule filing submitted under Section 19(b) of the Securities Exchange Act of 1934 (each ETP a “Rule Filing ETP” and each associated filing a “Rule Filing”)?**

A Rule Filing ETP must continue to comply with those statements or representations made within its Rule Filing. These statements or representations may relate to the ETP’s index composition, the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, and intraday indicative values, and the applicability of Exchange listing rules.

- 4. Where can a list of ETPs which do not meet the Listing Standards be found? When will an ETP be included on this list? How else does the Staff communicate to market participants that an ETP does not meet the Listing Standards?**

An ETP which the Staff has determined to be deficient will be included on the Below Listing Standards page of the [Cboe Listings website](#). An ETP is determined to be deficient where the Staff has determined that the ETP is not compliant with a Listing Standard.

The Exchange will also update the ETP’s Financial Status Indicator reflected on the Securities Information Processor (the “SIP”). Any ETP deemed deficient by the Exchange will have a Financial Status Indicator of “below continuing listing standards.”

The ETP will continue to appear in such sources as being deficient until the ETP has been deemed by the Staff to be compliant with all Listing Standards.

- 5. Are ETPs which were listed prior to the implementation of the New Continued Listing Rules be required to be compliant with the Listing Standards on a continuous basis?**

Yes. All ETPs will be subject to the New Continued Listing Rules, irrespective of when they initially listed on the Exchange.

- 6. Where an index-based ETP’s portfolio holdings complies with the Listing Standards, is such ETP compliant or must the underlying index for the ETP meet the Listing Standards?**

Currently, the underlying index for the ETP must meet the Listing Standards in order to be compliant with the New Continued Listing Rules.

7. Which ETPs are subject to periodic reviews of the Listing Standards by the issuer? How often should an issuer test for compliance with the Listing Standards?

All ETPs listed on the Exchange should test for compliance with the Listing Standards. Under the New Continued Listing Rules, an issuer should test for compliance with the Listing Standards upon any index rebalance, index reconstitution, or other material change to the index, reference asset, or, for Managed Fund Shares, a material change to the portfolio (collectively, a “Material Change”), as applicable, but no less frequently than on a quarterly basis.

An issuer may set the quarterly schedule, whether based on the fiscal year-end of an ETP, the calendar quarters, or otherwise. Any test conducted as part of a Material Change would satisfy the testing requirement for the applicable quarter.

Issuers may rely on reasonable interpretations of the Listing Standards in developing their compliance testing methodologies.

8. What is the process for the issuer if it discovers an ETP is not compliant with the New Continued Listing Rules?

An issuer which determines that an ETP is not in compliance with the New Continued Listing Rules, as a result of the compliance testing described in FAQ #7, shall provide the Exchange with prompt notification of such noncompliance. Noncompliance notifications should be sent to the Staff. Upon receipt of the notification, the Staff will perform its own compliance review and then make a determination as to how to proceed.

9. Will issuers be required to provide their Listing Standards compliance testing results to the Staff?

Issuers will not be required to routinely provide testing results to the Exchange; however, the Staff may request testing results from the issuer at its discretion.

Issuers will be required to provide an annual attestation for all of the issuer’s ETPs listed on the Exchange which affirms that such tests are being conducted and that the issuer is not aware of any undisclosed instances of noncompliance. In January of each year, the Staff will provide issuers a single attestation form to the compliance contacts that it has on file.

10. How will the Staff obtain index data to perform its own Listing Standards compliance reviews?

The Staff will request index data from the issuer if it is unable to obtain the index data from other sources.

11. What data does the Staff utilize to assess an ETP's compliance with the Listing Standards and ultimately determine if the ETP is complying with the New Continued Listing Rules?

The Staff relies on data provided by a third-party financial data vendor. The Staff may also rely on data supplied by an issuer.

12. At what point is an ETP considered deficient with a Listing Standard?

An ETP is considered deficient after the Staff makes a final determination that an ETP is no longer meeting a Listing Standard. For additional detail, see FAQ #13 below.

13. Will a deficient ETP be given a cure period to regain compliance? What is the process if the Staff believes an ETP may be deficient with a Listing Standard?

If the Staff believes an ETP may be deficient:

1. The Staff will send a request for information to the issuer asking if the issuer believes the ETP is compliant with the specified Listing Standard. If the issuer believes the ETP is compliant, the issuer must provide supporting data evidencing compliance. The issuer is allowed five business days to respond unless a request for an extension has been granted by the Staff.
2. Based on the information received from the issuer, the Staff will make a final determination regarding the ETP's compliance.
3. If the Staff determines the ETP is compliant, no further action will be taken.

If the Staff makes a final determination that an ETP is deficient, the following process commences:

1. The Staff sends a deficiency notification to the issuer of the ETP. In an egregious noncompliant situation, the Staff may issue a Delisting Determination in which the Staff will not provide the ETP an opportunity to regain compliance.
2. In typical noncompliant situations, the Staff sends a deficiency notification that will allow the issuer to submit a plan for the ETP to regain compliance.
3. Regardless of the type of deficiency notification, the issuer is required to make a public announcement disclosing receipt of the notification and the rule upon which the deficiency was based within four business days from receipt of the deficiency notification.
4. If the issuer submits a compliance plan within 45 days from the date the deficiency notification was provided to the issuer, the Staff will review the plan and make a

- determination as to whether it will grant a compliance extension of up to 180 days from the date the deficiency notification was submitted to the issuer.
5. If the issuer does not submit a compliance plan within 45 days, as outlined above, the Staff will issue a Delisting Determination which will indicate the date in which trading in the affected ETP will be suspended.

14. What happens when an ETP does not regain compliance during the cure period?

If the Staff does not possess evidence indicating an ETP regained compliance during the cure period, it will issue a request for information to the issuer. The issuer will be asked if it believes the ETP regained compliance during the cure period. If the issuer believes the ETP regained compliance, the issuer must provide supporting data evidencing compliance. The issuer is allowed five business days to respond, unless a request for an extension has been granted by the Staff.

If the issuer is not able to provide evidence that the ETP regained compliance, one of the following events will occur:

- The issuer may respond to the Staff's request for information by volunteering to delist the ETP. The Staff will not issue a Delisting Determination.
- The Staff will issue a Delisting Determination indicating the date the Exchange will suspend trading in the ETP, unless a review by the Exchange's Hearings Panel is requested within seven days of the issuance of the Delisting Determination.

Hearings Panel Review

A timely written request for review of the Delisting Determination by the Hearings Panel will stay the ETP's suspension. Exchange Rule 14.12(h) sets forth the procedures for requesting review by the Hearings Panel and the fees associated therewith, the possible outcomes of a hearing, and the procedures for the Hearings Panel.

Staff Contacts

Any further questions should be directed to the Staff:

Ben Boydston
Manager, Listing Qualifications
(913) 815-7175
bboydston@cboe.com

Courtney J. Smith
Analyst, Listing Qualifications
(913) 815-7046
csmith@cboe.com