



# Cboe U.S. ETP Listings Compliance Guide

January 5, 2024

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## OVERVIEW

The Cboe ETP Listings Compliance Guide (the “Compliance Guide”) is maintained by the Listing Qualifications team in an effort to assist issuers in complying with the listing requirements of ETPs listed on Cboe BZX Exchange, Inc. (the “Exchange”).

The Exchange’s listing requirements are intended to protect ETPs from manipulation and ensure investors have complete and equal access to information.

The Compliance Guide is not intended to supersede, overwrite or otherwise change any existing requirements set forth in Chapter XIV of the [Rules of Cboe BZX Exchange, Inc.](#) In the event of a conflict between the terms in the Compliance Guide and the Rules of Cboe BZX Exchange, Inc., the rules will govern.

## LISTING QUALIFICATIONS TEAM

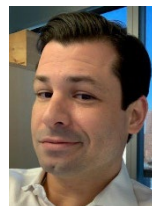
For any questions regarding compliance with the Exchange's rules, please contact any of the following members of Listing Qualifications (the "Staff"):



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## DEFINITIONS

**Authorized Participant** - An entity that has a written agreement with an ETP issuer or one of its service providers, which allows the authorized participant to place orders for the purchase and redemption of creation units.

**Authorized Participant Representative** - An unaffiliated broker-dealer, with which an Authorized Participant has signed an agreement to establish a Confidential Account for the benefit of such Authorized Participant, that will deliver or receive, on behalf of the Authorized Participant, all consideration to or from the Investment Company in a creation or redemption. An AP Representative will not be permitted to disclose the Creation Basket to any person, including the Authorized Participants. Applicable only to Managed Portfolio Shares.

**Delisting Determination** - A written determination by Listing Qualifications to delist a listed Company's securities for failure to meet a listing requirement.

**Exchange Market Hours** – Generally, the time between 7:00 am and 8:00 pm ET.

**Hearings Panel** - An independent panel made up of at least two persons who are not employees or otherwise affiliated with the Exchange or its affiliates, and who have been authorized by the Exchange Board of Directors.

**Intraday Indicative Value** – An estimate of the value of a share – may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares. The Intraday Indicative Value must be updated at least every 15 seconds during Regular Trading Hours.

**Listing Council** - The Exchange Listing and Hearing Review Council.

**Regular Trading Hours** – Generally, the time between 9:30 am and 4:00 pm ET.

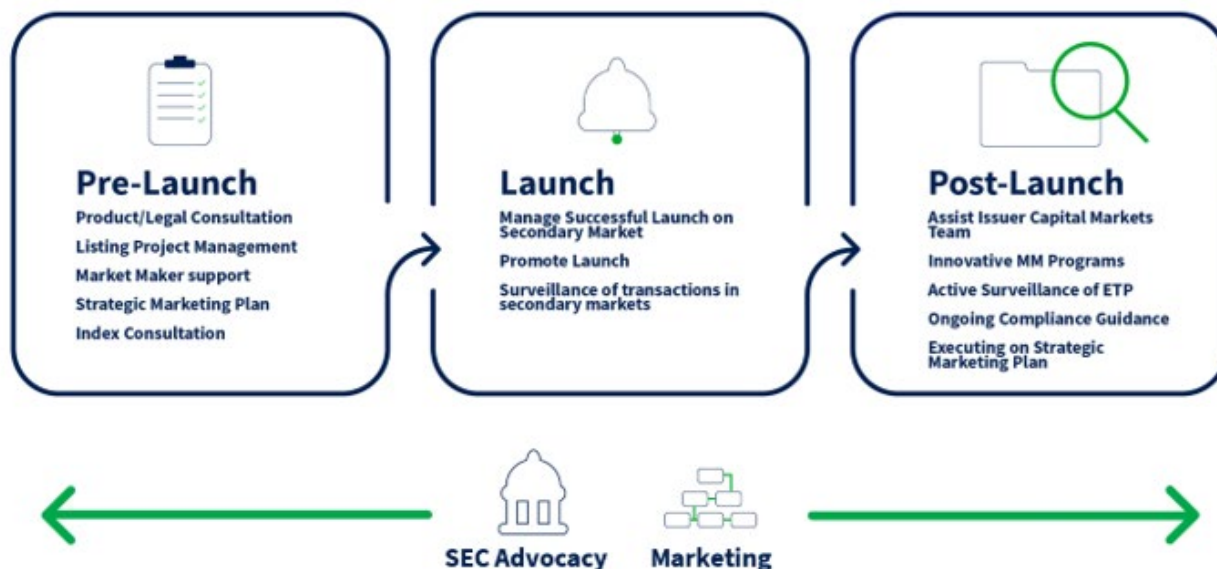
**Reporting Authority** – An institution, or reporting service designated by the Exchange or by the exchange that lists an ETP as the official source for calculating and reporting information related to the ETP, such as portfolio data, net asset value, and the Intraday Indicative Value.

**Tracking Basket** - The identities and quantities of the securities and other assets included in a basket that is designed to closely track the daily performance of the Fund Portfolio, as provided in the exemptive relief under the Investment Company Act of 1940 applicable to a series of Tracking Fund Shares.

**Verified Intraday Indicative Value** - The indicative value of a Managed Portfolio Share based on all of the holdings of a series of Managed Portfolio Shares as of the close of business on the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, priced and disseminated in one second intervals during Regular Trading Hours by the Reporting Authority. Applicable only to Managed Portfolio Shares.

## LISTING ON CBOE

Our listing services focus on the entire ETP lifecycle:



## LISTING A NEW ETP

1. **Notify Us** - Contact Cboe Listings by email at [Listings@cboe.com](mailto:Listings@cboe.com). Issuers with existing securities listed on Cboe can submit a notice through the [Issuer Portal](#) on Cboe.com.
2. **Complete the Listing Application** - Listing Qualifications will help you with completing the appropriate listing application and with providing the necessary supporting documentation.
3. **Receive Approval** - After your application has been completed and all supporting documentation has been received, Listing Qualifications will issue a listing approval letter.

## TRANSFERRING AN EXISTING ETP TO CBOE

1. **Notify Us** - Contact Cboe Listings by email at [Listings@cboe.com](mailto:Listings@cboe.com). Issuers with existing securities listed on Cboe can submit a notice through the [Issuer Portal](#) on Cboe.com.
2. **Receive Switch Plan** - You will be provided a switch plan which outlines the simple steps and target dates specific to the transfer of your security.

3. **Obtain Board Approval** - Obtain board approval to withdraw from the current listing venue and to list on Cboe.
4. **Complete Listing Application** - Listing Qualifications will help you with completing the appropriate listing application and with providing the necessary supporting documentation.
5. **Submit SEC Filings** - File the appropriate forms with the SEC.
6. **Receive Approval** - After your application has been completed and all supporting documentation has been received, Listing Qualifications will issue a listing approval letter.

## LISTING FEES

Cboe's innovative fee structure rewards issuers as they mature and experience a higher level of consolidated trading volume. Below are the listing fees, which are billed annually:

New ETPs				
Year One Annual Listing Fee is prorated based on date of listing	Beyond Year One			
	CADV: 1,000,001+ shares/day	CADV: 100,001 + shares/day	CADV: 10,001 + shares/day	CADV: Less than 10,000 shares/day
\$4,500	\$5,000	\$5,500	\$6,000	\$7,000

19b-4 Fees	Legacy/Transfer Listings	Defined Outcome Listing Fees
19b-4 Pricing (capped at \$22,500 per issuers per calendar year)  \$7,500 (if applicable)	Issuer's that listed on Cboe prior to January 1, 2019 or issuers that transfer ETPs to Cboe will have an annual listing fee of \$4,000 per ETP	Annual Listing Fees for series of ETPs that are designed to provide a particular set of returns over a specified outcome period based on the performance of an underlying instrument during the ETP's outcome period will be capped at \$16,000 per year.

### Notes:

- CADV = Consolidated Average Daily Volume
- A Form 19b-4 filing is required for products that do not meet the Exchange's generic listing requirements



## LISTING REQUIREMENTS

ETPs may be approved for listing and trading on the Exchange by either:

- Complying with all listing representations contained in a Rule Filing, as defined below;  
**or**
- Complying with all generic listing requirements of the specific ETP classification that the ETP has applied under.

### 19B-4 PRODUCT FILINGS

Prior to listing any ETP that would not comply with the generic listing requirements under Exchange rules, the Exchange must submit a rule filing on Form 19b-4 (a “Rule Filing”) and, where applicable, receive SEC approval of such filing prior to listing. All securities applying to list under certain ETP classifications must be approved for listing and trading via a Rule Filing.

Such ETP must continuously comply with the statements and representations contained in the Rule Filing. These statements and 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.

### GENERIC LISTING REQUIREMENTS

The “generic listing requirements” are the specific listing requirements that are stated within the ETP classification of the Exchange’s listing rules. These requirements may include criteria related to the ETP’s underlying components, the dissemination of the Intraday Indicative Value, daily portfolio disclosures, etc.

For any ETP which meets all generic listing requirements of the ETP classification that the issuer has applied under, the Staff has the authority to approve the ETP for listing and trading on the Exchange without having to submit a Rule Filing.

The sections that follow provide the generic listing requirements for the most common ETP classifications that are permissible to be listed on the Exchange. ***Unless noted below, the generic listing requirements are applicable at the time of commencement of trading and on a continual basis.***

The requirements noted below are specific to Exchange rules. All securities must also comply with the applicable requirements of the Investment Company Act of 1940, the Securities Act of 1933, and the Securities Exchange Act of 1934.

## **EXCHANGE-TRADED FUND SHARES (“ETFs”)**

*Exchange Rule 14.11(l)*

- A series of ETFs refers to shares issued by an “exchange-traded fund”, as defined in [Rule 6c-11](#) of the Investment Company Act of 1940 and, as such, any series of ETFs listed on the Exchange must comply with all conditions contained within Rule 6c-11.
- A minimum number of shares is required to be outstanding, as determined by the Exchange, at the time of commencement of trading on the Exchange. This requirement is not applicable on a continual basis.
- Following the initial twelve-month period after commencement of trading on the Exchange, there must not be less than 50 beneficial holders for 30 or more consecutive trading days.
- For passively managed ETFs:
  - If the index underlying a series of ETFs is maintained by a broker-dealer or fund adviser, the broker-dealer or fund adviser shall erect and maintain a “fire wall” around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer or fund adviser.
  - Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the composition, methodology, and related matters of an index underlying a series of ETFs, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable index.
- For actively managed ETFs:
  - If the investment adviser to the investment company issuing an actively managed series of ETFs is affiliated with a broker-dealer, such investment adviser shall erect and maintain a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to the portfolio of the ETFs.

- Personnel who make decisions on the portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable portfolio.

## **MANAGED PORTFOLIO SHARES (“MPS”)**

*Exchange Rule 14.11(k)*

- A series of MPS refers to shares issued by an actively managed fund that is not required to disclose its portfolio holdings daily and which the creation/redemption process is facilitated by an Authorized Participant Representative.
- The Exchange must file a Rule Filing with the SEC before listing and trading.
- A minimum number of shares is required to be outstanding, as determined by the Exchange, at the time of commencement of trading on the Exchange. This requirement is not applicable on a continual basis.
- The Verified Intraday Indicative Value must be widely disseminated at least every second during Regular Trading Hours and be disseminated to all market participants at the same time.
- Portfolio holdings must be disclosed within 60 days following the end of every fiscal quarter and be made available to all market participants at the same time.
- The net asset value (NAV) per share must be calculated daily and made available to all market participants at the same time.
- The investment company must file any filings required by the SEC and comply with the conditions of any exemptive order or no-action relief granted by the SEC to the investment company.
- Following the initial twelve-month period after commencement of trading on the Exchange, there must not be less than 50 beneficial holders for 30 or more consecutive trading days.
- If the investment adviser to the investment company issuing MPS is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a "fire wall" between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to such investment company portfolio and/or the creation basket.
- Any person related to the investment adviser or investment company who makes decisions pertaining to the investment company's portfolio composition or has access

to information regarding the investment company's portfolio composition or changes thereto or the creation basket must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable investment company portfolio or changes thereto or the creation basket.

- Any person or entity, including an Authorized Participant Representative, custodian, reporting authority, distributor, or administrator, who has access to information regarding the investment company's portfolio composition or changes thereto or the creation basket, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable investment company portfolio or changes thereto or the creation basket. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a "fire wall" between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio or creation basket.

## **TRACKING FUND SHARES ("TFS")**

*Exchange Rule 14.11(m)*

- A series of TFS refers to shares issued by an actively managed fund which is not required to disclose the Fund Portfolio, as defined in Exchange Rule 14.11(m)(3)(B), daily and which utilizes a tracking/proxy basket for the facilitation of the creation/redemption process.
- The Exchange must file Form 19b-4 with the SEC before listing and trading.
- A minimum number of shares is required to be outstanding, as determined by the Exchange, at the time of commencement of trading on the Exchange. This requirement is not applicable on a continual basis.
- The website must display the Tracking Basket daily and be made available to all market participants at the same time. The Tracking Basket must provide the following information for each component, as applicable: ticker symbol, CUSIP or other identifier, description of holding, quantity held, and percentage weight of the holding in the portfolio.
- Portfolio holdings must be disclosed within 60 days following the end of every fiscal quarter and be made available to all market participants at the same time.
- The net asset value (NAV) per share must be calculated daily and made available to all market participants at the same time.

- The investment company must file any filings required by the SEC and comply with the conditions of any exemptive order or no-action relief granted by the SEC to the investment company.
- Following the initial twelve-month period after commencement of trading on the Exchange, there must not be less than 50 beneficial holders for 30 or more consecutive trading days.
- If the investment adviser to the investment company issuing TFS is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a "fire wall" between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to the fund portfolio and/or the Tracking Basket.
- Any person related to the investment adviser or investment company who makes decisions pertaining to the investment company's fund portfolio and/or the Tracking Basket or has access to nonpublic information regarding the fund portfolio and/or the Tracking Basket or changes thereto must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the fund portfolio and/or the Tracking Basket or changes thereto.
- Any person or entity, including a custodian, reporting authority, distributor, or administrator, who has access to nonpublic information regarding the fund portfolio or the Tracking Basket or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable fund portfolio or the Tracking Basket or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a "fire wall" between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such fund portfolio or Tracking Basket.

## **SECURITIES LINKED TO THE PERFORMANCE OF INDEXES AND COMMODITIES ("ETN")**

*Exchange Rule 14.11(d)*

- An ETN (Exchange-Traded Note) is a debt security which provides a payment at maturity of a cash amount based on the performance of an underlying index, commodity, or currency.
- An ETN may track an underlying index of any combination of the following instruments:

- Equities;
  - Commodities and commodity derivatives;
  - Currencies and currency derivatives;
  - Fixed income securities; and
  - Futures.
- The index components and/or reference assets, in aggregate, must meet certain criteria. The criteria, which varies based on the type of reference assets, are found in Exchange Rules 14.11(d)(2)(K)(i) [Equities], 14.11(d)(2)(K)(ii) [Commodities and Currencies], 14.11(d)(2)(K)(iii) [Fixed Income Securities], and 14.11(d)(2)(K)(iv) [Futures].
  - The company issuing the ETN must have a minimum tangible net worth of \$250 million and exceed the earnings requirements set forth in Exchange Rule 14.8(b)(2) by at least 20% – or – have a minimum tangible net worth of \$150 million and exceed the earnings requirements by at least 20% and not to have issued securities where the original issue price of all the issuer's other index-linked note offerings exceeds 25% of the issuer's net worth.
  - The issue must have a term of between 1 year and 30 years and be non-convertible debt of the issuer.
  - The issuer must comply with Rule 10A-3 of the Securities Exchange Act of 1934.
  - The issue and issuer of the ETN must meet the applicable criteria for "Other Securities" set forth in Exchange Rule 14.11(h).
  - The aggregate market value and principal amount of the ETN must be at least \$400,000.
  - The Intraday Indicative Value for an ETN must be widely disseminated at least every 15 seconds during Regular Trading Hours and be disseminated to all market participants at the same time.
  - The value of the index or reference asset must be widely disseminated during Regular Trading Hours. The frequency of the index/reference value updates varies based on the instruments:
    - U.S. equities – at least every 15 seconds
    - International equities – at least every 60 seconds
    - Fixed income securities – at least once per day
    - Futures – at least every 15 seconds
  - If the index underlying an ETN is maintained by a broker-dealer or fund adviser, the broker-dealer or fund adviser shall erect and maintain a "fire wall" around the personnel who have access to information concerning changes and adjustments to

the index and the index shall be calculated by a third party who is not a broker-dealer or fund adviser.

## **TRUST ISSUED RECEIPTS (“TIR”)**

*Exchange Rule 14.11(f)*

- A TIR is a security (a) that is issued by a trust which holds specified securities deposited with the trust; (b) that, when aggregated in some specified minimum number, may be surrendered to the trust by the beneficial owner to receive the securities; and (c) that pays beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee by an issuer of the deposited securities.
- A minimum number of shares is required to be outstanding, as determined by the Exchange, at the time of commencement of trading on the Exchange. This requirement is not applicable on a continual basis.
- To be approved under generic listing requirements, the TIR must not invest in Investment Shares or Financial Instruments, as defined within Exchange Rule 14.11(f)(4)(A), and the component securities must meet the criteria stated in Exchange Rule 14.11(f)(3).
- For any TIR which invests in Investment Shares or Financial Instruments, the Exchange must file Form 19b-4 with the SEC before listing and trading.
- Following the initial twelve-month period following formation of the trust and commencement of trading on the Exchange, if the trust has more than 60 days remaining until termination, the TIR must not have less than 50 record and/or beneficial holders for 30 or more consecutive trading days.
- Following the initial twelve-month period following formation of the trust and commencement of trading on the Exchange, the trust must not have less than 50,000 receipts issued and outstanding.
- Following the initial twelve-month period following formation of the trust and commencement of trading on the Exchange, the market value of all receipts issued and outstanding must not be less than \$1 million.
- The trustee of the trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee.

- No change is to be made in the trustee of a TIR without prior notice and approval of the Exchange.
- Specific to TIR which invest in Investment Shares or Financial instruments, there are certain requirements related to the dissemination of the value of the underlying index and Intraday Indicative Value.

## COMMODITY-BASED TRUST SHARES (“CBTS”)

*Exchange Rule 14.11(e)(4)*

- A CBTS is a security (a) that is issued by a trust that holds a specified commodity deposited with the trust; (b) that is issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such trust which will deliver to the redeeming holder the quantity of the underlying commodity.
- A minimum number of shares is required to be outstanding, as determined by the Exchange, at the time of commencement of trading on the Exchange. This requirement is not applicable on a continual basis.
- The Exchange must file Form 19b-4 with the SEC before listing and trading.
- Following the initial twelve-month period following commencement of trading on the Exchange, if the trust has more than 60 days remaining until termination, the CBTS must not have less than 50 record and/or beneficial holders for 30 or more consecutive trading days.
- Following the initial twelve-month period following commencement of trading on the Exchange, the trust must not have less than 50,000 receipts issued and outstanding.
- Following the initial twelve-month period following commencement of trading on the Exchange, the market value of all receipts issued and outstanding must not be less than \$1 million.
- The trustee of the trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee.



- No change is to be made in the trustee of a CBTS without prior notice and approval of the Exchange.
- The value of the underlying commodity must be available at least every 15 seconds.
- The Intraday Indicative Value for a CBTS must be widely disseminated at least every 15 seconds during Regular Trading Hours and be disseminated to all market participants at the same time.

## COMPARISON TABLE

<b>Listing Requirement</b>	<b>ETFS</b>	<b>MPS</b>	<b>TFS</b>	<b>ETN</b>	<b>TIR</b>	<b>CBTS</b>
19b-4 required (i.e., no generic listing requirements)		✓	✓		✓ <sup>(1)</sup>	✓
6c-11 compliance	✓					
10D-1 compliance <sup>(2)(3)</sup>	✓	✓	✓	✓	✓	✓
Minimum shares at launch – Exchange discretion	✓	✓	✓		✓	✓
Component/reference asset criteria				✓	✓	
Index/reference asset value dissemination				✓	✓	✓
Intraday Indicative Value dissemination				✓	✓	✓
Verified Intraday Indicative Value dissemination		✓				
NAV disseminated daily	✓	✓	✓	✓ <sup>(4)</sup>	✓	✓
Portfolio disclosed daily	✓					
Portfolio disclosed quarterly		✓	✓			
Tracking Basket disclosed daily			✓			
>= 50 beneficial holders after 12 months	✓	✓	✓		✓	✓
Firewalls	✓	✓	✓	✓		
Material nonpublic information procedures	✓	✓	✓			
Required SEC filings		✓	✓			
Issuer capitalization				✓		
Issuer compliance with Rule 10A-3 of '34 Act				✓		
Min. receipts market value and outstanding					✓	✓

<sup>(1)</sup> Required if TIR is invested in Investment Shares or Financial Instruments.

<sup>(2)</sup> Applicable exemption: Any security issued by a management company that is registered under Section 8 of the Investment Company Act of 1940, **if** incentive-based compensation has not been rewarded to any executive officer of the company in any of the last three fiscal years, or since the listing of the company, if listed less than three fiscal years.

<sup>(3)</sup> Applicable exemption: Any security issued by a unit investment trust.

<sup>(4)</sup> Closing indicative value.

## ATTESTATIONS AND COMPLIANCE TESTING

In January of each year, the Staff provides each issuer a compliance attestation form by email. The issuer must affirm certain representations, including that its Exchange-listed ETPs will comply with the applicable listing requirements and that it will provide notification to the Exchange of non-compliance with Exchange rules.

All ETPs listed on the Exchange should test for compliance with the applicable listing requirements. Issuers may rely on reasonable interpretations of the listing requirements in developing their compliance testing methodologies.

## ISSUER NONCOMPLIANCE NOTIFICATIONS

An issuer which determines that an ETP is not in compliance with all applicable listing requirements shall provide the Staff with prompt notification of such noncompliance. Such notifications should be sent to [ListingQualifications@cboe.com](mailto:ListingQualifications@cboe.com).

## DEFICIENCY PROCEEDINGS

*Exchange Rule 14.12*

The Staff will initiate deficiency proceedings on an ETP when the Staff has determined that the ETP may not be compliant with at least one of the applicable listing requirements. Below is the process for when the Staff believes an ETP may be deficient with a listing requirement.

## REQUEST FOR INFORMATION

If the Staff believes an ETP may be deficient with a listing requirement:

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 requirement. If the issuer believes the ETP is compliant with such requirement, the issuer must provide supporting data evidencing compliance. The issuer is typically allowed five business days to respond to the Staff's request, 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 with such requirement.
3. If the Staff determines the ETP is compliant, no further action will be taken.

## ISSUANCE OF A DEFICIENCY NOTIFICATION

If the Staff determines that an ETP *is* deficient with a listing requirement:

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 with the specific listing requirement.
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 (the “Cure Period”).
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.

An ETP which the Staff has determined to be deficient will be included on the Below Listing Standards page of the [Cboe Listings website](#).

The Staff will also update the ETP’s financial status which is reflected on the Securities Information Processor. Any ETP deemed deficient by the Staff will have a financial status of “Below Listing Standards”.

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

## CURE PERIOD

At any point during the Cure Period, the issuer may provide data to the Staff evidencing compliance with the listing requirement that the ETP was deemed to be deficient with.

If the Staff does not possess evidence indicating the ETP regained compliance by the end of 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 typically 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 such evidence, 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 Staff will suspend trading in the ETP unless a review by the Hearings Panel is requested within seven days of the issuance of the Delisting Determination.

## **HEARINGS AND APPEALS**

*Exchange Rule 14.12*

### **REQUESTING A HEARING**

An issuer that has been issued a Delisting Determination may request review of that decision by the Hearings Panel.

Hearing requests must be in writing and delivered electronically to [Hearings@cboe.com](mailto:Hearings@cboe.com) within seven calendar days of the date of the notice.

A timely request for a hearing will stay the suspension and delisting pending a hearing and a written decision by the Hearings Panel, unless the basis for the delisting is a filing delinquency. In the case of a filing delinquency, the request for a hearing will automatically stay the suspension and delisting only for a period of 15 calendar days from the date the request was due unless the issuer requests and the Hearings Panel grants a further stay.

### **HEARING MECHANICS**

Hearings are generally scheduled to take place within 45 days of the date of request. An issuer is provided an opportunity to submit written materials and a plan of compliance before the hearing and may elect to make an oral presentation or to have its case decided solely on the basis of the written submission.

A Hearings Panel, comprised of at least two independent professionals appointed by the Exchange Board of Directors, will review the case and render a decision. The Hearings Panel may: suspend and delist the security; find the security is in compliance with listing standards; issue a decision that serves as a public reprimand letter in certain violations; or grant an exception to a listing standard for a period not to exceed 180 days from the date of the Delisting Determination. In the case of a filing delinquency, the Hearings Panel may not grant an exception for a period that exceeds 360 days from the due date of the first late filing.

## **APPEAL TO LISTING COUNCIL / CALL FOR REVIEW**

The Hearings Panel's decision may be appealed to the Listing Council within 15 calendar days of the written decision by the Hearings Panel. Appeals must be in writing and should be delivered electronically to [Appeals@cboc.com](mailto:Appeals@cboc.com). An appeal to the Listing Council does not stay the decision of the Hearings Panel or suspension of the issuer's securities.

A Hearings Panel decision may be called for review at the discretion of the Listing Council within 45 calendar days of the written decision. A call for review does not stay the suspension and delisting of the issuer's securities, unless the Listing Council specifies that it should.

The Listing Council may affirm, modify, reverse or remand the Hearings Panel's decision. If the Listing Council issues a decision that grants an exception to a listing standard, that exception can be for a period not to exceed 360 days from the date of the Delisting Determination; provided, however, that in the case of a filing delinquency, the Listing Council may not grant an exception for a period that exceeds 360 days from the due date of the first late filing.

## **REVIEW BY THE EXCHANGE BOARD**

Any decision of the Listing Council may be reviewed by the Exchange Board of Directors at the discretion of any Exchange board member.

## **INVOLUNTARY DELISTING**

A determination to delist an issuer's securities becomes final upon exhaustion of the issuer's appeal rights and the review rights of the Listing Council and the Exchange Board of Directors. When a Delisting Determination becomes final, the Exchange will file a Form 25 with the SEC and provide a copy to the issuer. The Exchange will also issue a press release announcing the final Delisting Determination and post a notice on its website. Removal of the securities from listing on the Exchange becomes effective no sooner than 10 calendar days after the filing with the SEC.

## MATERIAL NEWS DISCLOSURES

*Exchange Rule 14.6(b)*

### MATERIAL INFORMATION

An issuer must promptly disclose, through any method compliant with Regulation Fair Disclosure (“Regulation FD”), material information that would reasonably be expected to affect the value of an ETP or influence investors’ decisions. Prior to the public release, the issuer must provide notice of such disclosure to the Staff.

Material news events may include, but are not limited to:

- A temporary suspension of new issuances or redemptions;
- The termination of a suspension of new issuances or redemptions;
- The liquidation of an ETP;
- A substantive change in an underlying index’s methodology;
- A change to a new underlying index;
- A change to an ETP’s investment objective;
- Stock splits;
- The receipt of a Staff-issued deficiency notification; and
- A material restatement of the NAV.

Issuers finding it necessary to restate a previously displayed NAV should contact the Staff prior to the published restatement. Depending on the materiality of the restatement, the Staff may request that the issuer publish a news release stating the corrected NAV. Furthermore, trading in the affected security may be subject to a temporary trading halt.

### DISCLOSURE INSTRUCTIONS

To ensure a timely and effective release of material news, issuers are encouraged to contact the Staff by telephone prior to submitting the information through the Electronic Disclosure Submission System (“EDSS”). The EDSS is accessed by logging in to the [Issuer Portal](#).

Only authorized users, as granted by an officer of the issuer, are permitted access to the EDSS. The Staff will only discuss nonpublic information with these authorized users. To establish or alter the authorized users list, please complete an [EDSS Authorized Users form](#).

Due to the sensitivity of nonpublic information, information submitted via the EDSS are encrypted using Secure Sockets Layer (SSL). Once received, these files are not viewed by any associate of the Exchange, except for the Staff, until the public release has occurred.

The time in which the Staff must receive notice through the EDSS is dependent on the time of the public release. If the public release is scheduled to occur:

- *Before 7:00 a.m. ET on a day the Exchange is open* – The Staff must receive notice prior to 6:50 a.m. ET.
- *During Exchange Market Hours* – The Staff must receive notice at least 10 minutes prior to the public release.
- *Any other time* – The Staff must receive notice prior to 6:50 a.m. ET on the next day the Exchange is open.

For emergency situations only, the Staff may accept disclosures submitted via telephone.

If material information is inadvertently disclosed to a select group of market participants during the Exchange Market Hours, an issuer must immediately notify the Staff. The Staff will determine whether the security will be halted and if a press release is required.

## TRADING HALT DETERMINATION

A temporary trading halt benefits current and potential shareholders by halting all trading in any listed security until there has been an opportunity for new information to be disseminated to the public. This function decreases the possibility of some investors acting on information known only to them. A trading halt provides the public with an opportunity to evaluate the information and consider it in making investment decisions. It also alerts the marketplace to the fact that news has or will soon be released.

While it is the issuer's responsibility to determine whether a news event is material, it is the Staff's obligation to determine whether a trading halt is appropriate. Depending on the materiality of the information and the anticipated effect of the information on the price of the security, the Staff may advise the issuer that a temporary trading halt is appropriate to allow for full dissemination of the information and to maintain an orderly market. A trading halt normally lasts one half-hour but may last longer if a determination is made that the information has not been adequately disseminated.

## UNUSUAL MARKET ACTIVITY

Changes in market activity prior to an issuer's release of material information may indicate that the information has become known to the investing public. Changes in market activity also may occur when there is a release of material information by a source other than the issuer.

Depending on the nature of the event and the issuer's views regarding the business advisability of disclosing the information, the Staff may work with the issuer to accomplish a timely release of the information.



## RESPONDING TO REQUESTS FOR INFORMATION

Pursuant to Exchange Rule 14.6(a)(1), an issuer must respond to requests for information from the Staff related to:

- Unusual price movement;
- Unusual volume;
- Other events having a material impact on trading; and
- Compliance with Exchange rules.

An ETP may be suspended or delisted if the issuer of the ETP fails to provide such information within a reasonable number of days or if any communication to the Staff contains a material misrepresentation or omits material information.

## CORPORATE ACTION NOTIFICATIONS

*Exchange Rule 14.6(e)*

Certain corporate action events will trigger the requirement for an issuer to submit a notification to the Staff. The Staff encourages issuers to consult with the Staff in advance of the formal notification.

All corporate action forms are found on the [Corporate Action & Other Forms](#) page in the [Issuer Portal](#). Completed forms should be uploaded through the Issuer Portal or sent by email to [CorporateActions@cboe.com](mailto:CorporateActions@cboe.com). The due dates, which vary by the type of corporate action, are indicated below.

Depending on the materiality of the corporate action, the issuer may be required to disclose the announcement to the public through a Regulation FD-compliant method. See 'Material News Disclosures' above.

A fee of \$2,500 is assessed to each individual security undergoing one or more corporate actions. This fee is not assessed to cash distribution and voluntary delisting events. For a change in issuer name, a change in principal executive offices, or a change in transfer agent or registrar, a single fee of \$2,500 is assessed.

## CASH DISTRIBUTION

The Staff asks issuers to provide a yearly schedule of anticipated cash distributions as soon as such are determined. If a schedule is not provided to the Staff, an issuer must notify the Staff at least 10 calendar days prior to the record date of any distribution. Issuers must also provide public notice, through a Regulation FD-compliant method, of the distribution action at least

10 calendar days prior to the record date. Notice to the Staff must occur no later than simultaneously with the public notice.

Cash distribution rate submissions must be provided to the Staff by 6:00 p.m. ET on the business day prior to the distribution's ex-date. If a submission cannot be sent by 6:00 p.m. ET, please call a member of Listing Qualifications or email them at [CorporateActions@cboe.com](mailto:CorporateActions@cboe.com) as soon as practicable.

Cash distribution rate submissions must be provided in a Microsoft Excel or CSV file and must only show data for Cboe-listed securities. Below is the required file format:

Symbol	CUSIP	Declaration Date	Record Date	Pay Date	Income	Long Term Capital Gains	Short Term Capital Gains	Return of Capital
ABCD	123456789	3/1/2023	3/3/2023	3/8/2023	0.15			
WXYZ	987654321	3/1/2023	3/3/2023	3/8/2023	0.2545789		0.48	

## FORWARD STOCK SPLIT

The issuer should submit the Non-Cash Dividend/Distribution form to the Staff at least 10 calendar days prior to the record date.

## REVERSE STOCK SPLIT

The issuer must submit the Substitution Listing Event form to the Staff at least 15 calendar days prior to the effective date of the reverse stock split.

## CHANGE IN COMPANY NAME

An issuer shall provide the Change in Company Record form within 10 calendar days after the change; however, the Staff recommends that the submission be made not later than two business days prior to the effective date.

## CHANGE IN COMPANY (REORGANIZATIONS)

A trust seeking to switch the registration of an ETP to a separate trust shall notify the Staff at least 10 business days prior to the effective date. The Staff will then determine what documentation is necessary to complete the transaction.

## **CHANGE IN TITLE OF SECURITY**

An issuer shall provide the Change in Company Record form within 10 calendar days after the change; however, the Staff recommends that the submission be made not later than two business days prior to the effective date.

## **CHANGE IN TRADING SYMBOL OR CUSIP**

An issuer must provide the Change in Company Record form at least two business days prior to the effective date.

## **CHANGE IN PRINCIPAL EXECUTIVE OFFICES**

An issuer shall provide the Change in Company Record form as soon as practicable.

## **CHANGE IN TRANSFER AGENT OR REGISTRAR**

An issuer must provide written notification as soon as practicable. The issuer must submit a letter, signed by an authorized officer of the issuer, including the following: (i) complete corporate name; (ii) effective date of change; and (iii) name of new transfer agent/depositary.

## **VOLUNTARY DELISTING**

An issuer seeking to liquidate an ETP should contact the Staff to discuss the planned timeline of the event. The issuer must provide the Staff with written notice of such determination at least ten calendar days prior to any Form 25 filing with the SEC. This notice must state the material facts relating to the reasons for the delisting. Contemporaneous with notice to the Staff, the issuer must publish notice of its intent to delist, along with its reasons for delisting, via a press release and on its web site. This information must reside on the issuer's web site until the delisting has become effective.

It is customary for the Exchange to file a Form 25 on behalf of the delisted security. The Exchange may only file Form 25 once it receives confirmation that the ETP has been fully redeemed to shareholders of record. If the issuer files the Form 25, the issuer must also provide a copy of the Form 25 to the Staff simultaneously with its SEC filing.

## LIQUIDITY PROGRAMS

### LEAD MARKET MAKER PROGRAM

*Exchange Rule 11.8(e)*

ETPs which participate in the Exchange's [Lead Market Maker Program](#) have a designated Lead Market Maker ("LMM"). An LMM must also be a registered market making member of the Exchange.

### LIQUIDITY MANAGEMENT PROVIDER PROGRAM

The [Liquidity Management Provider \("LMP"\) Program](#) is a rewards-based program that incentivizes liquidity providers to make a better market in ETPs. Incentives are based on an LMP's quote quality in the LMP Securities, which include all Exchange-listed ETPs and certain other ETPs.

All Exchange members are eligible to enroll in the LMP Program and are not required to register as market makers on the Exchange.

## CORPORATE GOVERNANCE REQUIREMENTS

*Exchange Rule 14.10*

An issuer with an ETP listed on the Exchange is required to meet the standards of corporate governance. These requirements are summarized below, along with the relevant rule references. ETPs registered under the Investment Company Act of 1940 may be exempt from certain provisions of Exchange Rule 14.10. An issuer should refer to the complete requirements included in this rule for further details.

### WRITTEN INTERPRETATION OF AN EXCHANGE'S LISTING RULES

An issuer may submit a request to the Staff for the Exchange to provide a written interpretation of a rule contained in Chapter XIV. The issuer must provide the details of the inquiry and a nonrefundable fee of \$15,000.

A response to a request for a written interpretation will be provided generally within four weeks from the date the Staff receives all information necessary to respond to the request. If

an issuer requires a response by a specific date, it may state the date in its request for the written interpretation and the Exchange will attempt to respond by that date.

The Exchange does not impose fees for requests related to initial listing or requests for a financial viability exception pursuant to Exchange Rule 14.10(i)(6). An issuer that has a class of securities which has been suspended or delisted from the Exchange is eligible to request a written interpretation while the suspension or delisting decision is under review, subject to the payment of the appropriate fee.

## **NONCOMPLIANCE WITH CORPORATE GOVERNANCE RULES**

An issuer must provide the Staff with prompt notification after an executive officer becomes aware of any noncompliance by the issuer with the requirements of Exchange Rule 14.10.

## **AUDIT COMMITTEES**

In the absence of an exemption, the Exchange requires each issuer or its sponsor to maintain an audit committee that complies with Rule 10A-3 under the Securities Exchange Act of 1934. An issuer must notify the Staff immediately if the membership of its audit committee or the status of its exemption changes. This notification should be made promptly after the change is effective and should be made via e-mail to the Staff.

## **COMPENSATION RECOVERY POLICY**

Absent an applicable exemption, as set forth Exchange Rule 14.12(k), Companies are required to adopt a policy related to the recovery of erroneously awarded compensation.

## ***Discretionary Authority***

*Exchange Rule 14.2*

The Exchange has broad discretionary authority over the initial and continued listing of securities on the Exchange in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

The Exchange may use such discretion to deny initial listing, apply additional or more stringent criteria for the initial or continued listing of particular securities, or suspend or delist particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities on the Exchange inadvisable or unwarranted in the opinion of the Exchange, even though the securities meet all enumerated criteria for initial or continued listing on the Exchange.

As set forth in the Rules, the Exchange may determine to suspend or terminate a listing if an issuer files for bankruptcy, when an issuer's independent accountants issue a disclaimer opinion on financial statements required to be audited, or when financial statements do not contain a required certification. The Exchange may deny initial or continued listing to an issuer when an individual (e.g., an officer, director, significant shareholder or consultant to the issuer) with a history of regulatory misconduct is associated with the issuer. In addition, the Exchange may determine to suspend or terminate a listing if an issuer fails to submit requested information, or makes any communication to the Exchange containing a material misrepresentation or omits material information necessary to make a communication to the Exchange not misleading.

