

MEMO# 30521

January 13, 2017

ICI Submits Comment Letters Regarding Continued Listing Standards for Exchange-Traded Products

[30521] January 13, 2017 TO: ICI Members

ETF (Exchange-Traded Funds) Committee

ETF Advisory Committee SUBJECTS: Exchange-Traded Funds (ETFs) RE: ICI Submits

Comment Letters Regarding Continued Listing Standards for Exchange-Traded Products

The Investment Company Institute yesterday submitted comment letters to the Securities and Exchange Commission regarding rule filings submitted by The Nasdaq Stock Market LLC, Bats BZX Exchange, Inc., and NYSE Arca, Inc., which would impose for the first time continued listing standards on certain exchange-traded funds that would be identical to their initial listing standards.[\[1\]](#) The letters urge the exchanges to withdraw the rule filings, and, if the exchanges do not, the letters ask the SEC to disapprove them. The letters (which are identical) are attached and briefly summarized below.

First, the letters note that none of the rule filings provides even minimally sufficient detail to understand how an ETF can comply with the proposed rules and how the exchanges would enforce them. For example, ETFs generally cannot control the indexes they track and do not have the ability to ensure that such indexes and their constituents meet initial listing standards on an ongoing basis. Further, the proposed rules do not explain adequately the process by which an exchange would designate an ETF that tracks a non-compliant index with a “below compliance” indicator and engage in delisting proceedings.

Second, the letters note that the proposed rules would result in differential treatment of ETFs as compared to other securities, with no explanation for why that is appropriate. There is a long history of different initial and continued listing standards on US exchanges, and continued listing standards for equity securities generally differ from initial listing standards to reflect the need for a customized approach for trading after the initial listing. None of the rule filings explains why it is appropriate to have customized ongoing listing standards for other equity securities, but identical initial and continued listing standards for ETFs.

Third, the letters note that as a justification for the proposed rule changes, the filings assert the SEC’s concern about potential manipulation of ETFs but provide no evidence, or even explanation, for what this concern might be. The filings further do not explain how the proposed continued listing standards address whatever concern about manipulation might

exist.

The letters also rebut statements in the rule filings that the SEC simply is codifying long-standing guidance or clarifying existing rules that the initial and continued listing standards are the same.

Finally, the letters note that the potential for ETFs, through no action of their own, to be delisted raises very serious economic consequences for investors and the ETFs themselves.

The letters conclude by stating that there simply is no adequate statutory or policy basis for the SEC to approve the proposed rules in their current form. Rather, the letters recommend that the SEC consider more customized ongoing standards that do not create unavoidable compliance traps.

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Associate General Counsel

[Attachment No. 1](#)

[Attachment No. 2](#)

[Attachment No. 3](#)

endnotes

[1] See File No. SR-NASDAQ-2016-135, *available at* <https://www.sec.gov/rules/sro/nasdaq/2016/34-79081.pdf>; File No. SR-BatsBZX-2016-80, *available at* <https://www.sec.gov/rules/sro/batsbzx/2016/34-79450.pdf> ; File No. SR-NYSEArca-2017-01, *available at* <https://www.nyse.com/regulation/rule-filings?market=NYSE%20Arca>.

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