

MEMO# 35222

March 30, 2023

SEC Staff Issues Statement Regarding Risk Legend to be Used in Non-Transparent ETF Digital Advertisements

[35222]

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TO: ICI Members

Advertising Compliance Advisory Committee

Disclosure Working Group

ETF (Exchange-Traded Funds) Committee SUBJECTS: Advertising

Compliance

Disclosure

Exchange-Traded Funds (ETFs) RE: SEC Staff Issues Statement Regarding Risk Legend to be Used in Non-Transparent ETF Digital Advertisements

The SEC has previously granted exemptive relief that permits certain fund sponsors to operate ETFs that do not fully disclose their portfolio holdings each day ("non-transparent ETFs"). Such exemptive relief requires non-transparent ETFs to include a lengthy risk legend in certain materials, including prospectuses, fund websites, and marketing materials.

On March 29, 2023, the SEC Division of Investment Management staff issued a statement ("Staff Statement")[\[1\]](#) permitting non-transparent ETFs to include in "digital advertisements" either the full risk legend as set forth in their respective exemptive orders or a shortened version of the risk legend as follows:

This ETF is different from traditional ETFs - traditional ETFs tell the public what assets they hold each day; this ETF will not. This may create additional risks.

For example, since this ETF provides less information to traders, they may charge you more money to trade this ETF's shares. Also, the price you pay to buy or sell ETF shares on an exchange may not match the value of the ETF's portfolio. These risks may be even greater in bad or uncertain markets. See the ETF prospectus for more information.

The Staff Statement permits use of the shortened legend only in digital advertisements and explains that "[t]he staff has become aware of potential space limitations in certain digital advertisements (e.g., small banner ads) that make it impracticable to use the legend as

worded and formatted in the exemptive orders." The Staff Statement also clarifies that it applies to any future non-transparent ETF exemptive orders that include the same risk legend requirement and that it is not intended to alter requirements related to the placement of the risk legend.

Erica Evans
Assistant General Counsel

Notes

[1] Staff statement regarding the risk legend used by non-transparent exchange-traded funds operating in reliance of an exemptive order under the Investment Company Act of 1940, SEC Division of Investment Management Staff (March 29, 2023), available at https://www.sec.gov/news/statement/im-staff-statement-etf-032923?utm_medium=email&utm_source=govdelivery.

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