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ETF ROUNDUP

Welcome to the latest issue of *ETF Roundup*, our guide to recent legal and regulatory developments affecting the exchange-traded fund (ETF) industry. We hope you find this newsletter useful. If you have any questions, or if there are any topics you would like us to address in future issues, please email us at **etfroundup@morganlewis.com** or contact any of the Morgan Lewis lawyers listed on page 15.

SEC PROPOSES NEW ETF RULE

The US Securities and Exchange Commission (SEC) **voted unanimously** on June 28 to **propose Rule 6c-11** under the Investment Company Act of 1940 (1940 Act), as well as amendments to Forms N-1A, N-8B-2, and N-CEN. For a high-level overview of the proposal, see our **LawFlash**. We are continuing to review the proposal and expect to issue further analysis in the near future.

The rule proposal follows remarks by Dalia Blass, director of the SEC's Division of Investment Management, during a **keynote address** at the ICI 2018 Mutual Funds and Investment Management Conference on March 19 in which she announced that delivering a recommendation to the SEC for an ETF rule is a "high priority" for the SEC staff. In her remarks, Ms. Blass noted that the term "ETF" is used to describe investment companies with a wide range of strategies as well as a number of products that are not investment companies or even funds (such as commodity pools and exchange-traded notes), and sought comments on whether addressing the nomenclature used for exchange-traded products would be helpful to investors and the markets (a request for comment is reflected in the rule proposal).

Ms. Blass also questioned whether the status of certain index providers as investment advisers should be revisited, noting that the provider of a bespoke or narrowly focused index may not be able to rely on the "publisher's exclusion" from the definition of "investment adviser" historically relied on by index providers. Earlier this year, the SEC staff indicated that index providers are an area of focus for examinations. A stricter application of the definition of "investment adviser" to index providers could have significant consequences, particularly for those firms that are structured to legally separate indexing and advisory services. This issue was not addressed in the rule proposal.

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THE LATEST IN ETF EXEMPTIVE RELIEF UNDER THE EXCHANGE ACT

Over the past several months, a number of ETFs have obtained exemptive and no-action relief under the Securities Exchange Act of 1934 (Exchange Act) and the rules thereunder that impact existing relief upon which ETFs currently rely to operate. The recently obtained relief affects, among other things: (i) the size and dollar value of creation units that index-based ETFs are required to issue; (ii) the number of components that index-based ETFs of ETFs are required to hold; and (iii) the number of components that actively managed ETFs are required to hold. Below, we provide a brief overview[1] of relief available to index-based and actively managed ETFs and explain how the recent developments affect such existing relief.

Background

As a general matter, because shares of ETFs trade in the secondary market, ETFs must obtain relief from various Exchange Act provisions and rules, namely:

- **Section 11(d)(1)**, which generally prohibits a broker-dealer that participates in the distribution of a new issue from extending credit in connection with the purchase of any distributed security within 30 days of the distribution. Because ETFs are continuously offered, as well as traded in the secondary market, relief is necessary because these margin restrictions could be viewed as applicable to them.
- **Rule 10b-10**, which requires a broker dealer to disclose certain information to clients before or at the completion of a transaction. Relief is necessary because it would be burdensome for an ETF to comply with Rule 10b-10 to the extent that all of its requirements were viewed to be applicable to all securities comprising the creation or redemption basket.
- **Rule 10b-17**, which generally requires an issuer to give advance notice of certain specified actions (such as a dividend distribution, stock split, or rights offerings). Relief is necessary because it is difficult for ETFs to disclose: (1) in the case of a distribution in cash, the amount of cash to be paid or distributed per share; and (2) in the case of a distribution in the same security, the amount of the securities outstanding immediately before and immediately after the dividend or distribution and the rate of the dividend or distribution.
- **Rule 14e-5**, which prohibits any covered person in connection with a tender offer for equity securities from participating, purchasing, or arranging to purchase any subject or related securities except as part of the offer. Relief is necessary because the rule could be read to restrict the ability of a dealer-manager of a tender offer for a particular security in the ETF's portfolio from purchasing and redeeming ETF shares in-kind during the offer period.
- **Rules 15c1-5 and 15c-6**, which require broker-dealers to (1) disclose to its customers any control relationship between the broker-dealer and the issuer of the security being purchased or sold, and (2) where a broker-dealer effects a transaction with a customer in connection with any distribution in which the broker-dealer is interested, disclose to its customer the existence of such interest. The SEC staff has provided no-action relief with respect to these provisions primarily because of the composite nature of ETF shares and the relatively small proportionate share of any component security in an ETF share.
- **Rules 101 and 102 of Regulation M**, which, generally, limits the activities of those persons who have a readily identifiable incentive to manipulate the market during an offering. The SEC has provided relief to (1) allow persons who are participating in a distribution of ETF shares to bid for or purchase the shares during their participation in the distribution; (2) clarify that the receipt of securities comprising the basket of securities received in connection with the redemption of ETF shares does not constitute an "attempt to induce any person to bid for our purchase a covered security, during the applicable restricted period" within the meaning of Regulation M; and (3) allow the ETF to redeem its shares during the continuous offering of the shares.

The SEC has provided relief from the foregoing provisions through a series of exemptive orders, no-action letters, and interpretive positions. In general, ETFs may rely on much of the existing relief so long as they are able to satisfy the conditions of the relief.

Index-Based ETFs

With respect to Rules 10b-17 and 14e-5 under the Exchange Act and Rules 101 and 102 of Regulation M, many index-based ETFs rely on the **Equity Class Relief Letter**[2] which provides relief subject to the following conditions:

1. The ETF shares are issued by an open-end investment company or unit investment trust registered with the SEC under the 1940 Act;
2. The ETF consists of a basket of 20 or more "component securities" (securities that make up the ETF basket), with no one component security constituting more than 25% of the total value of the ETF;
3. At least 70% of the ETF must be comprised of component

1 We note that this summary of existing relief is by no means an exhaustive discussion of the relief on which ETFs rely with respect to the Exchange Act. For more information on this topic, please reach out to your regular Morgan Lewis contact.

2 Letter from James A. Brigagliano, Acting Assoc Dir., Div. of Mkt. Regulation, SEC, to Stuart M. Strauss, Clifford Chance US LLP (Oct. 24, 2006).

securities that meet the minimum public float and minimum average daily trading volume thresholds under the "actively traded securities" definition found in Regulation M for excepted securities during each of the previous two months of trading prior to formation of the relevant ETF; provided, however, that if the ETF has 200 or more component securities, then 50% of the component securities must meet the actively traded securities thresholds;

4. ETF shares are to be issued and redeemed in creation unit aggregations of 50,000 shares or such other amount where the value of a creation unit is at least $1 million at the time of issuance; and

5. The ETF must be managed to track a particular index all the components of which have publicly available last sale trade information. The intra-day proxy value of the ETF per share and the value of the "benchmark" index must be publicly disseminated by a major market data vendor throughout the trading day.

Creation Unit Size/Dollar Value for Index-Based ETFs

In an **order issued in December 2017**, the SEC granted exemptive relief that provides index-based ETFs with the ability to issue shares even if they are unable to meet the minimum creation unit size or dollar value stated in condition 4 above. The SEC noted that:

> consistent with the treatment of actively managed ETFs, so long as shares of an index-based ETF are continuously redeemed at the NAV in creation unit size aggregations, the specific size and/or dollar value of such creation unit will not disqualify the fund's reliance, with respect to Exchange Act Rule 10b-17 and Regulation M, on the Equity Class Relief Letter, provided that all of the other conditions set forth in the Equity Class Relief Letter are met.

Although the relief appears to eliminate the requirement that a creation unit be of a particular size or dollar value, it is worth noting that Form N-1A currently permits ETFs to omit certain information from their prospectuses so long as they issue and redeem shares in creation units of not less than 25,000 shares each. However, under the SEC's proposal for Rule 6c-11, discussed above, the SEC would not mandate a particular maximum or minimum creation unit size.

Minimum Number of Components for Index-Based ETFs of ETFs

In an **order issued in May 2018**, the SEC granted exemptive relief confirming that index-based ETFs of ETFs would be able to rely on the Equity Class Relief Letter with respect to Exchange Act Rule 10b-17 and Regulation M notwithstanding their inability to satisfy conditions 2 and 3 listed above, so long as (i) the underlying funds in the basket meet all conditions set forth in relevant class relief letters, will have received individual relief from the SEC, or will be able to rely upon individual relief even though they are not named parties to the request relief; and (ii) shares of the ETF of ETFs are continuously redeemed at its NAV in creation unit aggregations, and provided that all of the other conditions set forth in the Equity Class Relief Letter are met or separate relief is granted from the other specified conditions.

Actively Managed ETFs

With respect to Rules 10b-10, 11d1-2, 15c1-5, and 15c1-6 under the Exchange Act, many actively managed ETFs rely on the **WisdomTree Letter**[3], which provided relief for actively managed ETFs similar to relief given in the **2005 Class Relief Letter**[4] for index-based ETFs. The 2005 Class Relief Letter required that index-based ETFs satisfy all three of the following conditions (such ETFs are referred to in the relief as "Qualifying ETFs"):

1. The ETF shares are issued by an open-end investment company or unit investment trust registered with the SEC under the 1940 Act;

2. The ETF shares are listed and trade on a market that has obtained approval from the SEC pursuant to Section 19(b) of the Exchange Act of a rule change regarding the listing and trading of the ETF shares on the market (or that is relying on Rule 19b-4(e) to list and trade the ETF shares); and

3. The ETF (a) consists of a basket of 20 or more component securities, with no one component security constituting more than 25% of the total value of the ETF, and is managed to track a particular index all of the components of which are publicly available; or (b) solely for purposes of the exemptive relief for APs from Section 11(d)(1) of the Exchange Act, is an ETF with respect to which the staff has granted broker-dealers who are not APs of the ETF relief from the requirements of Section 11(d)(1) in a letter dated prior to the date of this letter, provided that the ETF has not changed in such a way as to materially affect any of the facts or representations in such prior letter.

Minimum Number of Components for Actively Managed ETFs

In a **no-action letter issued in May 2018**, the SEC's Division of Trading and Markets stated that it would not recommend enforcement action to the SEC if a broker-dealer treats shares of an actively managed ETF, for purposes of Rules 10b-10, 11d1-2, 15c1-5, and 15c1-6 under the Exchange Act, as shares of a Qualifying ETF, notwithstanding that the

3 Letter from Josephine J. Tao, Division of Trading and Markets, SEC, to Richard F. Morris, Deputy General Counsel, WisdomTree Asset Management, Inc. (May 9, 2008).

4 Letter from Catherine McGuire, Esq., Chief Counsel Division of Market Regulation to the Securities Industry Association Derivative Products Committee (Nov. 21, 2005).

funds would be unable to satisfy any of the three prongs of the third condition in the 2005 Class Relief Letter, which requires an ETF to consist of a basket of 20 or more component securities, with no one component security constituting more than 25% of the value of the ETF, and be managed to track an index.

THE SEC'S CURRENT TAKE ON BLOCKCHAIN AND CRYPTOCURRENCY

Blockchain technology and cryptocurrency continue to attract a great deal of interest from ETF sponsors and investors. Here we summarize recent important developments at the SEC relevant to this space.

Views of the Division of Investment Management

The SEC's Division of Investment Management (Division) continues to take a measured approach with respect to ETFs seeking to provide investment exposure to blockchain technology. To date, the Division has permitted the registration of ETFs seeking to implement an investment strategy that provides exposure to blockchain technology through equity investments only. In one notable variation, an ETF registrant disclosed that it also intended to invest to a limited extent in the interests of a physical bitcoin trust thereby achieving some exposure to physical bitcoin. While the Division of Investment Management permitted the registration statement to go effective, the registrant disclosed that its ability to invest in such interests was subject to the approval by the SEC's Division of Trading and Markets of a proposed rule change to NYSE Arca's listing rules, which has not yet been approved.

With the exception of the indirect bitcoin exposure noted above, neither the Division of Investment Management nor the Division of Trading and Markets has yet permitted a fund that seeks direct exposure to a cryptocurrency to reach the market despite several registration attempts pursuant to both the 1940 Act and the Securities Act of 1933 (Securities Act). After requesting that several registrants withdraw their registration statements or face a stop order, the Division of Investment Management issued a letter detailing its concerns regarding cryptocurrency (discussed below). To our knowledge, the Division staff have not permitted the registration of an ETF (or mutual fund) seeking to invest primarily, directly, or indirectly through the use of derivatives, in cryptocurrency since the letter was published.

In reviewing registration statement filings for ETFs proposing to invest in blockchain technology and cryptocurrency-related companies, the Division of Investment Management has focused on such ETFs' ability to comply with Section 35(d) of the 1940 Act and Rule 35d-1 thereunder. It is the Division's position that, to the extent an ETF wishes to include the term "blockchain" or a similar term in its name, the ETF should be able to comply with the Division's interpretation of Rule 35d-1, i.e., that the ETF should invest at least 80% of its net assets, including the amount of any borrowings for investment purposes, in the securities of companies whose economic fortunes are significantly tied to blockchain technology, where "significantly tied" means that the company derives at least 50% of its revenues or profits from, or devotes at least 50% of its assets to, blockchain technology. Interestingly, Division staff requested registrants who elected not to include the term "blockchain" or a similar term in their names to also demonstrate that the ETFs' investments could satisfy the 80% investment requirement despite the fact that they were not required to adopt such an investment policy pursuant to Rule 35d-1. The staff has indicated it is open to considering other investment criteria that would demonstrate an issuer is significantly tied to blockchain technology, but to date it does not appear the staff has been presented with an alternative investment criteria it found acceptable. Presumably as a result of this interpretation, we are aware of no ETF to date that has completed the registration process and kept the term blockchain in its name. The Division of Investment Management has also indicated that it is focused on adequate investment liquidity and risk disclosure, including plain English blockchain risk explanations and fulsome cybersecurity risk disclosure.

SEC Staff Issues Letter Regarding Funds with Cryptocurrency-Related Holdings

On January 18, the SEC staff **issued a letter** to the Investment Company Institute and the Asset Management Group of SIFMA articulating the staff's outstanding questions concerning how funds holding substantial amounts of cryptocurrencies and related products would satisfy the requirements of the 1940 Act and its rules. The letter, which should be taken into consideration by any issuer seeking to make investments in cryptocurrencies or cryptocurrency-related instruments, identifies various questions concerning valuation, liquidity, custody, arbitrage (for ETFs), potential manipulation and other risks with respect to such investments.

The letter states that, until the questions identified can be addressed satisfactorily, the SEC staff does not believe that it is appropriate for sponsors to initiate registration of funds that intend to invest substantially in cryptocurrency and related products, and that the SEC staff had asked sponsors that had registration statements filed for such funds to withdraw them. The letter further states that if a sponsor were to file a post-effective amendment under Rule 485(a) under the Securities Act to register a fund that invests substantially in cryptocurrency or related products, the SEC staff "would view that action unfavorably and would consider actions necessary or appropriate to protect Main Street investors, including recommending a stop order to the Commission."

Director of Division of Corporate Finance's Remarks re: Cryptocurrencies

In **remarks given on June 14**, William Hinman, director of the SEC's Division of Corporation Finance, discussed the application of the federal securities laws to digital asset transactions. Notably, Mr. Hinman announced his view concluding that in their present state, neither bitcoin nor ether would be considered securities for purposes of the federal securities laws because their networks are sufficiently decentralized and because applying the disclosure regime of the federal securities laws to current transactions in these products would seem to add little value. Mr. Hinman explained the analysis leading him to that conclusion and outlined a series of factors to be considered when seeking to determine whether a cryptocurrency should be considered a cryptocurrency.

SEC Appoints Senior Advisor for Digital Assets and Innovation

On June 4, the SEC **announced** that Valerie Szczepanik has been appointed to serve as associate director of the Division of Corporation Finance and senior advisor for Digital Assets and Innovation. In this newly created advisory position, Ms. Szczepanik will coordinate efforts across all SEC divisions and offices regarding the application of US securities laws to emerging digital asset technologies and innovations, including initial coin offerings and cryptocurrencies.

NYSE ARCA ADOPTS NEW PROCESS FOR ETF OFFICIAL CLOSING PRICES

Effective June 4, NYSE Arca, Inc. (the Exchange) **adopted** a new process for setting the Official Closing Price (OCP) for ETFs when the Exchange does not conduct a closing auction or if a closing auction trade is less than one round lot.[5] In particular, in those circumstances, the ETF's OCP is now calculated using both (i) a time-weighted average price of the national best bid or offer (NBBO) midpoint over the last five minutes of trading before the end of core trading hours[6] and (ii) any last-sale eligible trades during the same period. The new process is intended to provide a value that is indicative of the true and current value of an ETF, using the most recent and reliable market information possible.

An ETF's OCP is the price established in a closing auction of one round lot or more on a trading day. On any given trading day, a large number of ETFs may either not have a closing auction or not have a closing auction trade greater than one round lot. Prior to June 4, in those circumstances, an ETF's OCP was determined using the most recent consolidated last-sale eligible trade during core trading hours. If there was no such last-sale eligible trade on the trading day, the ETF's OCP was the prior trading day's OCP. Under the old process, the OCP for a thinly traded ETF may have been based on a last-sale trade that was hours or days old. In addition, the use of the consolidated last-sale eligible trade increased the potential for an OCP based on an anomalous trade that did not reflect the ETF's true and current value. In an effort to reduce these occurrences and to provide a more accurate value of an ETF, the Exchange adopted the new process.

Under the new process, if the Exchange does not conduct a closing auction or if a closing auction trade is less than one round lot, an ETF's OCP is derived by adding (i) a percentage of the time weighted average price of the NBBO midpoint over the last five minutes of trading before the end of core trading hours (TWAP) and (ii) a percentage of the last consolidated last-sale eligible trade during the same period. The percentages assigned to each are based on when the last consolidated last-sale eligible trade occurs, with trades occurring closer to the close of trading being assigned more weight as follows:

1. Prior to five minutes before the end of core trading hours—the TWAP is given 100% weighting;
2. Between five minutes and four minutes before the end of core trading hours—the TWAP is given 40% weighting and the consolidated last-sale eligible trade is given 60% weighting;
3. Between four minutes and three minutes before the end of core trading hours—the TWAP is given 30% weighting and the consolidated last-sale eligible trade is given 70% weighting;
4. Between three minutes and two minutes before the end of core trading hours—the TWAP is given 20% weighting and the consolidated last-sale eligible trade is given 80% weighting;
5. Between two minutes and one minute before the end of core trading hours—the TWAP is given 10% weighting and the consolidated last-sale eligible trade is given 90% weighting; and
6. During the last one minute before the end of core trading hours—the consolidated last-sale eligible trade is given 100% weighting.

5 The new process applies to all "auction-eligible securities," which means all securities for which the Exchange is the primary listing market and UTP Securities designated by the Exchange. A UTP Security is a security listed on a national securities exchange other than the Exchange and that trades on the NYSE Arca Marketplace pursuant to unlisted trading privileges.

6 The term "core trading hours" means the hours of 9:30 am Eastern Time through 4:00 pm Eastern Time or such other hours as may be determined by the Exchange from time to time.

Under the new process, if an ETF's OCP cannot be determined as described above, the most recent consolidated last-sale eligible trade during core trading hours on the trading day will be the OCP, similar to the old process. Also similar to the old process, if there are no consolidated last-sale eligible trades during core trading hours on the trading day, the OCP will be the prior trading day's OCP.

As a practical matter, it appears an ETF listed on the Exchange may now use the OCP determined by this new process to satisfy exemptive relief requirements to disclose on its website certain daily information related to closing price. We will continue to monitor this development, including whether any other exchanges adopt similar processes.

SEC PROPOSES RULES TO PROMOTE RESEARCH ON INVESTMENT FUNDS

The SEC **released a proposal** May 23 intended to promote research on ETFs and other "covered investment funds."[7] The proposal is noteworthy in that it would make available the safe harbor of Rule 139 under the Securities Act, which generally permits broker-dealers to publish research reports on securities, to unaffiliated broker-dealers seeking to publish research reports on ETFs and other covered investment funds. With this safe harbor, such research reports on ETFs and other covered investment funds would be deemed not to constitute an offer for sale or offer to sell securities for purposes of the Securities Act, thereby removing prospectus delivery obligations and reducing the potential for materials to be deemed to be non-conforming prospectuses. In addition, the proposal would exclude covered investment fund research reports from certain filing requirements under the 1940 Act.

The proposal, which was mandated by the Fair Access to Investment Research Act of 2017, consists primarily of two new rules:

- **Proposed Rule 139b under the Securities Act**, which includes certain conditions[8] that, if satisfied, would provide that an unaffiliated broker-dealer's publication or distribution of a covered investment fund research report will be deemed not to constitute an offer for sale or offer to sell a covered investment fund's security for purposes of Sections 2(a)(10) and 5(c) of the Securities Act. Rule 139b would apply even if the broker-dealer is participating or may participate in a registered offering of the covered investment fund's securities. The proposed rule would establish a new safe harbor similar to the existing safe harbor under Rule 139, which permits broker-dealers to issue research reports about other issuers or their securities.
- **Proposed Rule 24b-4 under the 1940 Act** would exclude a covered investment fund research report from the filing requirements of Section 24(b) of the 1940 Act[9] (or the rules and regulations thereunder), except to the extent that such report is otherwise not subject to the content standards in self-regulatory organization rules related to research reports, including those contained in the rules governing communications with the public regarding investment companies or substantially similar standards.

In connection with the proposal, the SEC also proposed a conforming amendment to Rule 101 of Regulation M. The proposed conforming amendment is intended to align the treatment of research under proposed Rule 139b with the treatment of research under other rules of Regulation M. If adopted as proposed, the new rules could have a significant impact on the ETF marketplace, as they would expand the universe of broker-dealers able to provide research reports on ETFs. Comments on the proposal were due by July 9.

RECENT DEVELOPMENTS AFFECTING THE LIQUIDITY RULE AND RELATED REQUIREMENTS

Since our last ETF Roundup, there have been a number of developments relating to Rule 22e-4 under the 1940 Act for liquidity risk management programs (commonly referred to as the Liquidity Rule) and related reporting and disclosure requirements. We discuss a number of these here.

7 "Covered investment funds" include registered investment companies, business development companies, and trusts or other persons issuing securities in an offering registered under the 1933 Act (i) whose securities are listed for trading on a national securities exchange, (ii) whose assets consist primarily of commodities, currencies, or derivative instruments that reference commodities or currencies or interests in the foregoing, and (iii) whose registration statement under the 1933 Act reflects that its securities are purchased or redeemed, subject to conditions or limitations, for a ratable share of its assets (e.g., ETFs).

8 In particular, the conditions are as follows with respect to an ETF which is the subject of a covered investment fund research report: (i) the ETF must be in existence for at least 12 months; (ii) the ETF must have at least $75 million in assets; (iii) the broker-dealer must not be the ETF's investment adviser; (iv) the broker-dealer must not be an affiliated person of the ETF; and (v) the broker-dealer must not be an affiliated person of the ETF's investment adviser. Because Rule 139b would otherwise require ETFs to be a year old and have $75 million in assets, broker-dealers would not be able to rely on Rule 139b with respect to newly seeded ETFs.

9 Section 24(b) of the 1940 Act effectively prohibits a registered investment company to use sales literature that has not been filed with the SEC.

SEC Amends Liquidity Risk Management Disclosure Requirements

The SEC **adopted** amendments on June 28 to Forms N-PORT and N-1A designed to improve the reporting and disclosure of liquidity information by registered open-end investment companies. Among other things, the amendments:

- Replace the requirement in Form N-PORT that a fund publicly disclose on an aggregate basis the percentage of its investments allocated to each liquidity classification category (or "bucket") with a new narrative discussion in the fund's shareholder report briefly discussing the operation and effectiveness of its liquidity risk management program. In eliminating the public disclosure requirement, the SEC expressed concerns about investor understanding of the classification information as well as the potential of inappropriately focusing investors' attention on liquidity risk over other risk factors. A fund will still be required to report liquidity classification information confidentially to the SEC on Form N-PORT.
- Provide funds with the flexibility to split a fund's portfolio holdings on Form N-PORT into more than one classification category under specified circumstances[10] when split reporting equally or more accurately reflects the liquidity of the investment or eases cost burdens. With respect to this amendment, the SEC acknowledged that the requirement to classify each entire position into a single classification category poses difficulties for certain holdings and may not accurately reflect the liquidity of that holding, or be reflective of the liquidity risk management practices of the fund.
- Require funds to disclose their holdings of cash and cash equivalents on Form N-PORT. This information will be made publicly available on a quarterly basis. In adopting this amendment, the SEC noted that the additional disclosure of cash and certain cash equivalents by funds also will provide more complete information to be used in analyzing a fund's highly liquid investment minimum, as well as trends regarding the amount of cash being held.

The compliance dates for the amendments[11] are as follows:

Form N-PORT Amendments	Compliance Date	First N-PORT Filing Date
Large Entities[12]	June 1, 2019	July 30, 2019
Small Entities[13]	March 1, 2020	April 30, 2020
Form N-1A (Shareholder Report) Amendments		
Large Entities	December 1, 2019	
Small Entities	June 1, 2020	

In addition to these changes, the adopting release states that the SEC staff will monitor the implementation of the Liquidity Rule and related reporting requirements and evaluate (i) the costs and benefits of the Liquidity Rule and its associated classification requirements; (ii) whether there should be public dissemination of fund-specific liquidity classification information; (iii) whether the SEC should propose amendments to the Liquidity Rule to move to a more principles-based approach in light of this evaluation; (iv) and whether the SEC should propose to require certain empirical data metrics be disclosed. The SEC expects that this evaluation will take into account at least one full year's worth of liquidity classification data from large and small entities. The SEC staff will use the results of this evaluation to recommend any further steps with respect to liquidity risk management. As a result, the Liquidity Rule may continue to evolve in the future.

Liquidity Rule Compliance Date Extended

On February 22, the SEC **adopted an interim final** rule that extends for six months the compliance date for the portfolio classification and certain classification-related elements of the Liquidity Rule. The SEC noted that the additional time will allow fund groups and service providers to adequately address these complex and technology-dependent requirements and promote a smooth and efficient implementation of the rule.

In adopting the interim final rule, the SEC acknowledged that it had received numerous industry requests to extend the compliance date for the Liquidity Rule, and stated that it had observed that (i) funds will rely extensively on service

10 Funds may choose to indicate the percentage amount of a holding attributable to multiple classification categories only in the following circumstances: (1) if portions of the position have differing liquidity features that justify treating the portions separately; (2) if a fund has multiple sub-advisers with differing liquidity views; or (3) if the fund chooses to classify the position through evaluation of how long it would take to liquidate the entire position (rather than basing it on the sizes it would reasonably anticipated trading).

11 In December 2017, the SEC **delayed by nine months** implementation of the Form N-PORT filing requirement. As a result, funds in larger fund groups must begin to submit reports on Form N-PORT on EDGAR by April 30, 2019, and funds in smaller fund groups must begin to submit reports on Form N-PORT by April 30, 2020. In so doing, the SEC acknowledged the sensitivity of the non-public portfolio holdings information to be reported on the new form and is intended to allow time for the staff to resolve data-security-related issues with the SEC's EDGAR system. During the delay, larger fund groups must maintain in their records the information required to be reported on Form N-PORT and must provide the information to the SEC upon request. Funds also must continue filing portfolio holdings reports on Form N-Q during the interim period.

12 "Larger entities" are defined as funds that, together with other investment companies in the same "group of related investment companies," have net assets of $1 billion or more as of the end of the most recent fiscal year of the fund.

13 "Smaller entities" are defined as funds that, together with other investment companies in the same group of related investment companies, have net assets of less than $1 billion as of the end of its most recent fiscal year.

providers to comply with the classification requirements, (ii) additional time is required for service provider systems to be fully developed and tested, and (iii) funds are facing compliance challenges due to questions that they have raised about the rule that may require interpretive guidance. subject to the approval by the SEC's Division of Trading and Markets of a proposed rule change to NYSE Arca's listing rules, which has not yet been approved.

The revised compliance dates for the various elements of the Liquidity Rule are as follows:

Requirements	Compliance Dates for Fund Groups	
	With Assets of $1 Billion or More[14]	With Assets of Less than $1 Billion[15]
• Classification of each portfolio investment into one of four liquidity categories; • Determination of a fund's highly liquid investment minimum (Highly Liquid Minimum); • Initial board approval of the liquidity risk management program (Liquidity Program); • Annual board reporting regarding the Liquidity Program; and • Form N-PORT liquidity classification and Highly Liquid Minimum reporting requirements. • Form N-LIQUID Highly Liquid Minimum reporting requirements.	June 1, 2019	December 1, 2019
• Implementation of a Liquidity Program to assess, manage, and periodically review a fund's liquidity risk; • Limitation of a fund's investment in illiquid investments to no more than 15% of the fund's net assets (15% Illiquid Limit); • Adoption of policies and procedures for in-kind redemptions; • Board designation of the Liquidity Program • Form N-LIQUID 15% Illiquid Limit reporting requirements; and administrator; • Form N-CEN reporting requirements.	December 1, 2018	June 1, 2019

As noted in the chart, the compliance date for the 15% Illiquid Limit and the related board and SEC reporting requirements have not been extended. The interim final rule adopting release, however, provides the following guidance to assist In-Kind ETFs and funds not engaging in full portfolio classification during the compliance extension period in identifying illiquid investments for purposes of complying with the 15% Illiquid Limit:

- A fund could establish a process (which could be automated) to preliminarily identify certain asset classes or investments that the fund reasonably believes are likely to be illiquid (preliminary evaluation). This preliminary evaluation could be based on the fund's previous trading experience, its understanding of the general characteristics of the asset classes, or through other means. A fund could choose to determine that certain investments are illiquid based solely on the preliminary evaluation.[16]
- Alternatively, if the preliminary evaluation establishes a reasonable basis for believing that an investment is likely to be illiquid, but the fund wishes to further evaluate its status, the fund may determine whether that investment is illiquid through the full classification process set forth in the Liquidity Rule (secondary evaluation).

SEC Staff Responds to Liquidity Rule FAQs

On January 10 and February 21, the SEC staff **issued responses to frequently asked questions (FAQs)** related to the Liquidity Rule. With respect to ETFs, the staff stated the following:

14 Fund groups with net assets of $1 billion or more must comply by June 1, 2019. Fund groups with net assets of less than $1 billion must comply by December 1, 2019.

15 Fund groups with net assets of $1 billion or more must comply by December 1, 2018. Fund groups with net assets of less than $1 billion must comply by June 1, 2019.

16 The SEC noted that a fund making use of a preliminary evaluation would conduct periodic testing of the results of the preliminary evaluations to determine whether they continue to be accurate as part of its required review of the adequacy and effectiveness of the liquidity risk management program's implementation.

- For purposes of defining and testing compliance with its de minimis cash amount, an ETF may exclude cash in redemption proceeds that is proportionate to the ETF's uninvested portfolio cash.
- It would be reasonable for an In-Kind ETF to determine that if the percentage of its overall redemption proceeds paid in cash does not exceed 5% (subject to permissible exclusions), such use would be de minimis. An In-Kind ETF may determine that cash use of more than 5% in redemptions is de minimis based on an evaluation of the ETF's particular facts and circumstances, including the ETF's Liquidity Program and whether redemptions in cash in excess of 5% could give rise to liquidity risks substantially similar to those of mutual funds. However, if an ETF's percentage of overall redemption proceeds paid in cash exceeds 10% (subject to permissible exclusions), it would be unreasonable to consider it a de minimis amount of cash for purposes of qualifying as an In-Kind ETF.
- An In-Kind ETF may take a variety of reasonable approaches to determine whether its cash use is de minimis, so long as the approach is consistently applied. For example, an In-Kind ETF could determine that a reasonable approach might include (i) testing each individual redemption transaction to ensure that each transaction has no more than a de minimis cash amount, or (ii) testing its redemption transactions in their totality over a reasonable period to ensure that, on average, its aggregate redemption transactions have no more than a de minimis cash amount. A reasonable period for an ETF with frequent redemption basket activity may be a day or a week, while a reasonable period for an ETF with less frequent redemption basket activity may be up to a month. The staff does not believe using a period over a month would be unreasonable. An ETF may choose to use either its daily net or total redemptions for each day of the period it selects when determining whether its cash use is de minimis.
- The staff will not recommend enforcement action if an ETF that loses its status as an In-Kind ETF comes into compliance with the liquidity classification and Highly Liquid Minimum requirements of the Liquidity Rule as soon as reasonably practicable after the ETF no longer qualifies as an In-Kind ETF (i.e., a fund will not be required to come into compliance immediately after losing its status). There is no specific period of time that an ETF must wait before it can determine that it re-qualifies as an In-Kind ETF. An ETF that loses its status as an In-Kind ETF could potentially re-qualify as an In-Kind ETF if it makes a reasonable determination, based on its particular facts and circumstances, that the event that caused it to lose its status as an In-Kind ETF was an extraordinary one-time event that is unlikely to occur again.
- A new ETF may conclude that it qualifies as an In-Kind ETF based on an analysis of its policies and procedures and its expected redemption practices. In addition, if an ETF changes its policies and procedures to restrict its ability to meet redemptions using cash, and if the ETF otherwise reasonably concludes that its use of cash to meet redemptions is likely to decline to a de minimis level and reasonably expects to maintain such levels going forward, it may determine that it qualifies as an In-Kind ETF.

SEC PROPOSES TO AMEND LOAN RULE

We **previously reported** that the SEC staff **extended relief** granted in a **previously issued no-action letter** permitting registered investment companies to use the audit services of a public accounting firm that has relationships that would otherwise cause noncompliance with Rule 2-01(c)(1)(ii)(A) of Regulation S-X, commonly known as the Loan Rule. The relief is notable for permitting ETFs, subject to certain conditions, to use the services of an auditor where the auditor has a lending relationship with an institution that acts as an authorized participant (AP) or market maker for the ETF and holds of record or beneficially more than 10% of the shares of the ETF.

The SEC **proposed amendments to the Loan Rule** on May 2 designed to better focus the analysis that must be conducted to determine whether an auditor is independent on relationships that, whether in fact or in appearance, could threaten an auditor's ability to exercise objective and impartial judgment. If adopted as proposed, the amendments would provide a permanent solution for the issues raised in the staff's no-action letter referenced above, including the lending relationship described between an auditor and an AP or market maker to an ETF.

Rule 2-01 of Regulation S-X requires auditors to be independent of their audit clients. Rule 2-01(c) sets forth a nonexclusive list of circumstances considered to be inconsistent with its independence standard, including where an accounting firm has a lending relationship with an entity having record or beneficial ownership of more than 10% of the equity securities of the firm's audit client (e.g., an ETF) or any of the client's affiliates.[17] In the proposing release, the SEC acknowledged that the Loan Rule may be implicated where a lender is the "record" holder of more than 10% of the audit client's equity securities, but not the "beneficial" owner, and, therefore, may be unable to influence an audit client through its holdings of the audit client's equity securities, and may have no economic incentive to do so. In

17 Under Rule 2-01(f)(4)(iv), an affiliate of the audit client includes each entity in an investment company complex (ICC) of which the audit client is a part. Accordingly, in the ICC context, an accounting firm is considered not independent under the Loan Provision if it has a lending relationship with an entity having record or beneficial ownership of more than 10% of any entity within the ICC, regardless of which entities in the ICC are audited by the accounting firm.

addition, the SEC noted that if an auditor is not independent under the Loan Rule with respect to only one fund in an investment company complex, no fund or other entity in the ICC may engage or retain that auditor.

As a result, when determining independence, an auditor to one fund in an ICC must seek information regarding the record and beneficial ownership of all of the other funds and entities in the ICC. This process may involve substantial time and expense, and, because other funds are not required to disclose this information, ultimately may not provide the information necessary to determine independence. To address these issues, the proposed amendments to the Loan Rule would: (i) focus its analysis solely on beneficial ownership rather than on both record and beneficial ownership; (ii) replace the existing 10% bright-line shareholder ownership test with a "significant influence" test; (iii) add a "known through reasonable inquiry" standard with respect to identifying beneficial owners of the audit client's equity securities; and (iv) amend the definition of "audit client" for a fund under audit to exclude funds that otherwise would be considered affiliates of the audit client.

The SEC requested comments on the proposed amendments by July 9.

INDUSTRY IN BRIEF

SEC Derivatives and Investor Experience Rulemaking Initiatives

The SEC's **Spring 2018 rulemaking agenda** included two initiatives that may be of interest to ETF issuers. First, an item titled "**Use of Derivatives by Registered Investment Companies and Business Development Companies**" is listed under the "Proposed Rule Stage" of rulemaking, with a note that the Division of Investment Management is considering recommending that the SEC re-propose a rule designed to enhance the regulation of the use of derivatives by registered investment companies, including ETFs. The SEC originally proposed a rule governing fund use of derivatives in December 2015 but has not taken any further action on it. The inclusion of the rule in the Spring 2018 rulemaking agenda indicates a renewed interest by the SEC in the topic.

Second, the SEC **issued a request for comment** in June seeking public input on how fund disclosure documents, such as ETF prospectuses and shareholder reports, could be enhanced in ways that would improve an investor's experience and help investors make more informed decisions. Accordingly, the agenda includes the corresponding "**Fund Retail Investor Experience and Disclosure Request for Comment**" item listed under the "Prerule Stage." Comments are due October 31, after which the SEC will review the industry's comments and determine whether to issue a proposed rule.

SEC Approves E-Delivery of Shareholder Reports, Requests Comments on Other Areas

On June 5, the SEC adopted **Rule 30e-3** under the 1940 Act, which will provide ETFs and certain other registered investment companies with an optional method to satisfy their obligations to transmit shareholder reports by making such reports and other materials accessible at a website address specified in a notice mailed to investors. Although the new delivery structure will not be entirely paperless, it promises to substantially reduce printing and mailing expenses for the registered fund industry beginning as early as January 1, 2021. A fund generally will be required to give two years advance notice to shareholders, in the form of a statement regarding its intent to rely on the rule in its prospectus, summary prospectus (if applicable), and annual and semiannual reports, before relying on the rule.

The SEC also issued certain requests for comment, including a request for comment from individual investors and other interested parties regarding enhancing the design, delivery and content of fund disclosures to improve the investor experience and to help investors make more informed investment decisions. Further, the SEC issued a request for comment on the processing fees charged by intermediaries for distributing non-proxy disclosure materials to fund investors under current rules of the NYSE and other self-regulatory organizations.

For more information, including important deadlines to consider and a Rule 30e-3 compliance checklist, see our **LawFlash**.

OCIE Publishes 2018 Exam Priorities

On February 7, the Office of Compliance Inspections and Examinations (OCIE) **published its exam priorities** for 2018. With respect to ETFs, OCIE will focus on funds that (i) have experienced poor performance or liquidity in terms of their subscriptions and redemptions relative to their peer groups, (ii) are managed by advisers with little experience managing registered investment companies, (iii) hold securities which are potentially difficult to value during times of market stress, (iv) seek to track custom benchmarks (to seek to identify potential conflicts between the investment adviser and index provider and to determine the investment adviser's role in the selection and weighting of index components); and (v) experience limited trading volume in the secondary market and that risk liquidation of assets in the event of delisting from their exchange. These examinations will include analysis of the sufficiency of related risk disclosures.

SEC Staff Issues MiFID II-Related No-Action Letters

On October 26, 2017, the SEC staff issued **three coordinated no-action letters** designed to enable market participants to comply with the research requirements of the

European Union's updated Markets in Financial Instruments Directive (MiFID II) in a manner that is consistent with the US federal securities laws.

As of January 3, an investment adviser, including an investment adviser to ETFs, subject to MiFID II is generally no longer able to receive inducements, including non-monetary benefits such as research, in connection with providing any investment or ancillary services to clients. Research is not regarded as an inducement under MiFID II, however, if the research is received in return for (i) direct payments from an investment manager's own resources, (ii) payments from a research payment account (RPA) that is controlled by the investment manager and funded by each client by means of a research budget that is set, regularly assessed, and agreed upon with the client, or (iii) a combination of the two. Because MiFID II requires an "unbundling" of execution and research payments made to broker-dealers, it raises a number of concerns among market participants subject to US federal securities laws premised on bundled commissions.

Together, and subject to various terms and conditions, the no-action letters provide that: (1) broker-dealers, on a temporary basis, may receive research payments from money managers subject to MiFID II directly or by contract funded from the manager's own accounts, an RPA or a combination of the two; (2) money managers subject to MiFID II directly or by contract may continue to aggregate orders for ETFs and other clients while accommodating the differing arrangements regarding the payment for research required by MiFID II without violating Section 17(d) of the 1940 Act and Rule 17d-1 thereunder; and (3) money managers may continue to rely on the existing safe harbor provided by Section 28(e) of the Exchange Act when paying broker-dealers for research through the use of an RPA. We discuss these issues and the related no-action letters in further detail in our **LawFlash**.

TRENDING SEC STAFF COMMENTS

Recently, we have found the following topics to be areas of focus for the SEC staff in their reviews of registration statements and other filings of ETFs and examinations of investment advisers to ETFs.

Creation and Redemption Transactions Disclosure

Although we reported on this previously, it is worth noting that the SEC staff is continuing to scrutinize registrants' disclosures regarding creation and redemption transactions. Specifically, the staff is requesting that cut-off times for purchases and redemptions of creation units be disclosed with specificity rather than by reference to other documents, such as an authorized participant handbook. In addition, to the extent registrants reserve the right to require that orders be placed earlier than the normal cut-off time (i.e., one or more business days prior to the order placement date), the staff is requesting an explanation of the legal basis for requiring such earlier cut-off times, which the staff considers to be inconsistent with Rule 22c-1 under the 1940 Act and the exemptive relief obtained by ETFs. In comments, the staff has expressed the view that (i) cut-off times should not be more than 24 hours before the NAV calculation time for the creation unit purchase or redemption order; (ii) a fund must make basket information publicly available with sufficient time in advance of the cut-off time to allow authorized participants the opportunity to evaluate the basket and determine whether to submit a creation unit purchase or redemption order; and (iii) a creation unit purchase or redemption order may not be made prior to the basket information being made publicly available.

NEW PRODUCT REGISTRATIONS

The following is a list of ETFs registered under the 1940 Act that filed a Form 8-A between October 13, 2017 and July 1, 2018. Form 8-A is filed to register a class of securities under Section 12(b) or 12(g) of the Exchange Act and is often filed in close proximity to an ETF's commencement of operations.

AdvisorShares Dorsey Wright Micro-Cap ETF	DWMC
AdvisorShares Dorsey Wright Short ETF	DWSH
KraneShares CCBS China Corporate High Yield Bond USD Index ETF	KCCB
iShares Robotics and Artificial Intelligence ETF	IRBO
O'Shares FTSE U.S. Quality Dividend ETF	OUSA
O'Shares FTSE Europe Quality Dividend ETF	OEUR
O'Shares FTSE Asia Pacific Quality Dividend ETF	OASI
FlexShares® High Yield Value-Scored Bond Index Fund	HYGV
Reality Shares Nasdaq NexGen Economy China ETF	BCNA
Communication Services Select Sector SPDR Fund	XLC
ALPS Clean Energy ETF	ACES
JPMorgan BetaBuilders Europe ETF	BBEU
JPMorgan BetaBuilders Japan ETF	BBJP
JPMorgan BetaBuilders MSCI US REIT ETF	BBRE

Fund	Ticker
Amplify EASI Tactical Growth ETF	EASI
Rogers AI Global Macro ETF	BIKR
Fidelity Low Duration Bond Factor ETF	FLDR
Fidelity High Yield Factor ETF	FDHY
AI Powered International Equity ETF	AIIQ
O'Shares Global Internet Giants ETF	OGIG
First Trust TCW Unconstrained Plus Bond ETF	UCON
Hartford Short Duration ETF	HSRT
Franklin Liberty High Yield Corporate ETF	FLHY
Franklin Liberty International Aggregate Bond ETF	FLIA
Franklin Liberty Senior Loan ETF	FLBL
Amplify Advanced Battery Metals and Materials ETF	BATT
Goldman Sachs JUST U.S. Large Cap Equity ETF	JUST
Virtus InfraCap U.S. Preferred Stock ETF	PFFA
REX BKCM ETF	BKC
Global X Future Analytics Tech ETF	AIQ
Salt truBetaTM High Exposure ETF	SLT
First Trust Dorsey Wright DALI 1 ETF	DALI
Pacer Benchmark Data & Infrastructure Real Estate SCTR ETF	SRVR
Pacer Benchmark Industrial Real Estate SCTR ETF	INDS
Pacer Benchmark Retail Real Estate SCTR ETF	RTL
ProShares S&P 500® Bond ETF	SPXB
USCF SummerHaven Dynamic Commodity Strategy No K-1 Fund	SDCI
iShares Gold Strategy ETF	IAUF
Direxion Daily Robotics, Artificial Intelligence & Automation Index Bull 3X Shares	UBOT
Principal Investment Grade Corporate Active ETF	IG
iShares Inflation Hedged Corporate Bond ETF	LQDI
Global X Autonomous & Electric Vehicles ETF	DRIV
VanEck Vectors Real Asset Allocation ETF iShares	RAAX

Fund	Ticker
iShares MSCI USA Small-Cap ESG Optimized ETF	ESGU
Pacer Military Times Best Employers ETF	VETS
PGIM Ultra Short Bond ETF	PULS
iShares U.S. Infrastructure ETF	IFRA
LHA Market StateTM U.S. Tactical ETF	MSUS
PPTY – U.S. Diversified Real Estate ETF	PPTY
iShares Evolved U.S. Consumer Staples ETF	IECS
iShares Evolved U.S. Discretionary Spending ETF	IEDI
iShares Evolved U.S. Financials ETF	IEFN
iShares Evolved U.S. Healthcare Staples ETF	IEHS
iShares Evolved U.S. Innovative Healthcare ETF	IEIH
iShares Evolved U.S. Media and Entertainment ETF	IEME
iShares Evolved U.S. Technology ETF	IETC
iShares iBonds Dec 2024 Term Muni Bond ETF	IBMM
Cboe Vest S&P 500 Dividend Aristocrats Target Income ETF	KNG
iShares Bloomberg Roll Select Commodity Strategy ETF	CMDY
Davis Select International ETF	DINT
NYSE Pickens Oil Response ETF	BOON
Agility Shares Dynamic Tactical Income ETF	ADTI
Volshares Large Cap ETF	VSL
First Trust Nasdaq Artificial Intelligence and Robotics ETF	ROBT
Xtrackers Russell 1000 US QARP ETF	QARP
Xtrackers United Kingdom Equity ETF	BRIT
Horizons Cadence Hedged US Dividend Yield ETF	USDY
Portfolio+ S&P® Mid Cap ETF	PPMC
Portfolio+ Emerging Markets ETF	PPEM
Portfolio+ Developed Markets ETF	PPDM
Portfolio+ Total Bond Market ETF	PPTB
Innovation Shares NextGen Vehicles & Technology ETF	EKAR

Vanguard U.S. Liquidity Factor ETF	VFLQ
Vanguard U.S. Minimum Volatility ETF	VFMV
Vanguard U.S. Momentum Factor ETF	VFMO
Vanguard U.S. Multifactor ETF	VFMF
Vanguard U.S. Quality Factor ETF	VFQY
Vanguard U.S. Value Factor ETF	VFVA
Cambria Covered Call Strategy ETF	CCOV
KraneShares MSCI All China Health Care Index ETF	KURE
WisdomTree CBOE Russell 2000 PutWrite Strategy Fund	RPUT
iShares Edge U.S. Fixed Income Balanced Risk ETF	FIBR
Innovation Shares NextGen Protocol ETF	KOIN
JPMorgan USD Emerging Markets Sovereign Bond ETF	JPMB
First Trust Indxx Innovative Transaction & Process ETF	BLCK
Motley Fool 100 Index ETF	TMFC
Pacer US Export Leaders ETF	PEXL
JPMorgan Long/Short ETF	JPLS
Western Asset Total Return ETF	WBND
InsightShares Patriotic Employers ETF	HONR
KraneShares Electric Vehicles and Future Mobility Index ETF	KARS
Reality Shares Nasdaq NexGen Economy ETF	BLCN
Amplify Transformational Data Sharing ETF	BLOK
Strategy Shares Nasdaq 7 HANDL Index ETF	HNDL
Fidelity International High Dividend ETF	FIDI
Fidelity International Value Factor ETF	FIVA
InsightShares LGBT Employment Equality ETF	PRID
American Century Diversified Corporate Bond ETF	KORP
American Century STOXX U.S. Quality Value ETF	VALQ
Arrow Dogs of the World ETF	DOGS

Arrow DWA Country Rotation ETF	DWCR
Natixis Loomis Sayles Short Duration Income ETF	LSST
ALPS Disruptive Technologies ETF	DTEC
Affinity World Leaders Equity ETF	WLDR
SPDR Kensho Intelligent Structures ETF	XKII
SPDR Kensho Smart Mobility ETF	XKST
SPDR Kensho Future Security ETF	XKFS
WisdomTree ICBCCS S&P China 500 Fund	WCHN
WisdomTree Balanced Income Fund	WBAL
Franklin FTSE India ETF	FLIN
Franklin FTSE Russia ETF	FLRU
Franklin FTSE Switzerland ETF	FLSW
Franklin FTSE Asia ex Japan ETF	FLAX
James Biblically Responsible Investment ETF	JBRI
Innovator IBD® ETF Leaders ETF	LDRS
Pacer WealthShieldSM ETF	PWS
American Energy Independence ETF	USAI
IQ Chaikin U.S. Large Cap ETF	CLRG
JPMorgan Managed Futures Strategy ETF	JPMF
USCF SummerHaven SHPEI Index Fund	BUY
USCF SummerHaven SHPEN Index Fund	BUYN
Xtrackers iBoxx USD Corporate Yield Plus ETF	YLDP
Xtrackers High Beta High Yield Bond ETF	HYUP
Xtrackers Short Duration High Yield Bond ETF	SHYL
Xtrackers Low Beta High Yield Bond ETF	HYDW
JPMorgan Event Driven ETF	JPED
ProShares Long Online/Short Stores ETF	CLIX
Goldman Sachs Access Emerging Markets Local Currency Bond ETF	GEMB
ProShares Decline of the Retail Store ETF	EMTY

Direxion Daily Pharmaceutical & Medical Bull 3X Shares	PILL
Vanguard Total Corporate Bond ETF	VTC
Entrepreneur 30 Fund	ENTR
AdvisorShares Vice ETF	ACT
iShares U.S. Dividend and Buyback ETF	DIVB
JPMorgan U.S. Momentum Factor ETF	JMOM
JPMorgan U.S. Minimum Volatility ETF	JMIN
JPMorgan U.S. Quality Factor ETF	JQUA
JPMorgan U.S. Value Factor ETF	JVAL
JPMorgan U.S. Dividend ETF	JDIV
Principal International Multi-Factor Index ETF	PXUS
Virtus Glovista Emerging Markets ETF	EMEM
First Trust SMID Cap Rising Dividend Achievers ETF	SDVY
John Hancock Multifactor Small Cap ETF	JHSC
First Trust Municipal High Income ETF	FMHI
Franklin FTSE Australia ETF	FLAU
Franklin FTSE Brazil ETF	FLBR
Franklin FTSE Canada ETF	FLCA
Franklin FTSE China ETF	FLCH
Franklin FTSE France ETF	FLFR
Franklin FTSE Germany ETF	FLGR
Franklin FTSE Hong Kong ETF	FLHK
Franklin FTSE Italy ETF	FLIY
Franklin FTSE Japan ETF	FLJP
Franklin FTSE Mexico ETF	FLMX
Franklin FTSE South Korea ETF	FLKR
Franklin FTSE Taiwan ETF	FLTW
Franklin FTSE United Kingdom ETF	FLGB
Franklin FTSE Europe ETF	FLEE
Franklin FTSE Europe Hedged ETF	FLEH

Franklin FTSE Japan Hedged ETF	FLJH
AAM S&P 500 High Dividend Value ETF	SPDV
AAM S&P Emerging Markets High Dividend Value ETF	EEMD
Sage ESG Intermediate Credit ETF	GUDB
FormulaFolios Tactical Income ETF	FFTI
FormulaFolios Hedged Growth ETF	FFHG
FormulaFolios Tactical Growth ETF	FFTG
FormulaFolios Smart Growth ETF	FFSG
Inspire 100 ETF	BIBL
iShares Broad USD High Yield Corporate Bond ETF	USHY
VictoryShares Emerging Market High Div Volatility Wtd ETF	CEY
USAA Core Short-Term Bond ETF	USTB
USAA Core Intermediate-Term Bond ETF	UITB
USAA MSCI USA Value Momentum Blend Index ETF	ULVM
USAA MSCI USA Small Cap Value Momentum Blend Index ETF	USVM
USAA MSCI International Value Momentum Blend Index ETF	UIVM
USAA MSCI Emerging Markets Value Momentum Blend Index ETF	UEVM
Oppenheimer Russell 1000 Dynamic Multifactor ETF	OMFL
Oppenheimer Russell 2000 Dynamic Multifactor ETF	OMFS
Oppenheimer Russell 1000 Low Volatility Factor ETF	OVOL
Oppenheimer Russell 1000 Momentum Factor ETF	OMOM
Oppenheimer Russell 1000 Quality Factor ETF	OQAL
Oppenheimer Russell 1000 Size Factor ETF	OSIZ
Oppenheimer Russell 1000 Value Factor ETF	OVLU
Oppenheimer Russell 1000 Yield Factor ETF	OYLD
Bernstein U.S. Research Fund	BERN
Bernstein Global Research Fund	BRGL

Morgan Lewis

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Morgan Lewis offers a deep bench of ETF lawyers who provide clients with insights into the legal, operational, and regulatory challenges facing the ETF industry. Our team draws on its understanding of US federal securities laws, derivatives, tax, and other disciplines to collaborate with clients and develop practical solutions and sophisticated products. For additional information, please contact any of the following lawyers.

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