

February 15, 2017

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: Continued Listing Standards for Exchange-Traded Products
File No. SR-NASDAQ-2016-135
File No. SR-BatsBZX-2016-80
File No. SR-NYSEArca-2017-01

Dear Mr. Fields:

Nuveen Fund Advisors, LLC, sponsor of the NuShares ETFs and an affiliate of Teachers Insurance and Annuity Association of America (“TIAA”), appreciates the opportunity to comment on the above-listed rule filings (the “Rule Filings”) submitted by The Nasdaq Stock Market LLC, Bats BZX Exchange, Inc., and NYSE Arca, Inc. (collectively, the “Exchanges”) which would require the initial and continued listing standards for certain exchange-traded products (“ETPs”) to be identical. While we generally support continued listing standards for ETPs, we echo the concerns expressed in the comment letters submitted by the Investment Company Institute (“ICI”) in response to the Rule Filings. We believe there is no adequate statutory or policy basis for the rules proposed in the Rule Filings. As such, we strongly urge the Exchanges to withdraw the Rule Filings for further consideration – and if they do not, we respectfully encourage the SEC to disapprove the Rule Filings.

Our concerns are five-fold. First, we believe the Rule Filings lack sufficient detail to explain how an ETP would comply with, and how the Exchanges would enforce, the proposed rules. For example, it is unclear whether an ETP would be responsible under the proposed rules for ensuring that an unaffiliated third-party index used by the ETP complies with initial listing standards on an ongoing basis. Lack of clarity with respect to compliance and enforcement of the proposed rules will ultimately disadvantage ETP investors.

Second, the proposed rules would result in differential treatment between ETPs and equity securities – and the Rule Filings do not explain why different approaches are appropriate. Historically, continued listing standards for equity securities have differed from initial listing standards, reflecting the necessity of a customized approach to trading after the initial listing.

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The Rule Filings fail to explain why it is necessary or appropriate for ETPs to have identical initial and continued listing standards while the standards for equity securities are different. The proposed rules would thus unfairly discriminate against ETP issuers – a result that is inconsistent with Section 6(a)(5) of the Securities Exchange Act of 1934.

Third, the Rule Filings cite a concern about the potential manipulation of ETPs as justification for the new listing standards – but provide no evidence or explanation of the specific concern. Furthermore, the Rule Filings do not explain how the proposed listing standards are meant to address the stated concern. The lack of evidence or argument in the Rule Filings as to how identical initial and continued listing standards would combat ETP manipulation undermines the Exchanges' justification for these proposed rules – particularly when such a requirement has not been applied to other securities.

Fourth, the Exchanges claim that the proposed rules simply codify long-standing SEC guidance on initial and continued listing standards, or clarify existing rules on the topic. We believe this claim to be inaccurate. We are not aware of any guidance from the SEC or from the Exchanges indicating that the initial and continued listing standards for ETPs should be identical.

Finally, we highlight that the potential delisting of ETPs, through no action of their own, could have serious economic consequences for both investors and the ETPs themselves.

As there is no statutory or policy basis for the SEC to approve the proposed rules put forward by the Exchanges, we would urge the Exchanges to withdraw the Rule Filings – and if they do not, we would respectfully encourage the SEC to disapprove the Rule Filings.

We would welcome the opportunity to engage further on any aspects of this Comment Letter.

Sincerely yours,



Kevin McCarthy
Senior Managing Director
Nuveen Fund Advisors, LLC