

BLACKROCK®

February 14, 2017

Submitted via electronic filing: <https://www.sec.gov/rules/proposed.shtml>

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Comments on 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:

This letter responds to the request of the Securities and Exchange Commission (“**Commission**”) for comment on the proposed rule changes filed by The Nasdaq Stock Market LLC (“**Nasdaq**”), BATS BZW Exchange, Inc. (“**BATS**”) and NYSE Arca, Inc. (“**NYSE**”) related to continued listing requirements and delisting procedures for certain exchange-traded funds (“**ETFs**”) (collectively, the “**Proposed Rules**”).¹ Under the Proposed Rules, certain listing requirements would apply to ETFs on both an initial and ongoing basis, rather than only at the time of initial listing.

BlackRock, Inc. (together with its affiliates, “BlackRock”) has significant concerns regarding the Proposed Rules. We strongly encourage BATS and NYSE to withdraw the Proposed Rules. Absent such withdrawal, we believe the Commission should disapprove the Proposed Rules for the reasons detailed below. We would also recommend that the SEC postpone the implementation date for the approved NASDAQ Final Rule until such time as the Rule can be replaced.

We agree with the Investment Company Institute’s (“ICI”) views and position reflected in its comment letter on the Proposed Rules. In particular, we reiterate that the Proposed Rules do not provide sufficient detail to understand how an ETF can comply with or implement the Proposed Rules, or how the exchanges would enforce such Proposed Rules, and that therefore the Commission must disapprove the Proposed Rules because it has no basis to approve them.²

¹ For purposes of this letter, “Proposed Rules” includes the January 12, 2017 approval by the Commission of Nasdaq’s rule proposal on an accelerated basis (See Securities Exchange Act Release No. 34-79399 (January 12, 2017)).

² ICI, Comment Letter, Comments on Continued Listing Standards for Exchange-Traded Products (January 12, 2017), available at <https://www.sec.gov/comments/sr-nasdaq-2016-135/nasdaq2016135-1489579-130626.pdf>.

With approximately 325 index ETFs in the United States alone, BlackRock is the largest ETF sponsor, and currently all of BlackRock's existing index-based ETFs use indexes that are established and maintained by unaffiliated third parties. This independence from the index sponsor is an express condition of the exemptive orders that BlackRock currently relies on for the operation of such index ETFs.³ The Proposed Rules—which require that the listing requirements be tested on the underlying index rather than on the actual portfolio—appear to be predicated on the assumption that an ETF can ensure that an unaffiliated index continues to comply, or that it is operationally feasible for an ETF to comply with, listing standards (that are currently tested upon launch of the ETF) on a continued basis. However, most ETF sponsors, including BlackRock, do not have any control over their underlying indexes and the Proposed Rules could unnecessarily cause an ETF to risk potential delisting when the ETF is otherwise operating effectively in the marketplace, which would be to the detriment of shareholders.

By way of example, an ETF that tracks an unaffiliated third party index composed of equity securities, through circumstances outside of the ETF's control, could fall out of compliance with the Proposed Rules if certain of the component securities in the index fall below the minimum monthly trading volumes established in the listing standards. Even if a third party index provider was amenable to changes to an underlying index that would allow an ETF to regain compliance with the continued listing standards, it is unlikely that the ETF would be able to formulate a compliance plan within 45 calendar days of the exchange staff's notification specified under the Proposed Rules, given that the ETF is dependent on the index provider to make such changes and cannot control the index provider's time frame for action and resolution.⁴

Further, many index-based ETFs employ a representative sampling strategy, and therefore may or may not hold all of the securities in their respective underlying index. Because the Proposed Rules require that the continued listing standards be met by the underlying index rather than by the ETF portfolio itself, even if an ETF does not hold those particular component securities of the underlying index in its portfolio, the ETF could be deemed to be out of compliance with the continued listing standards. It could require significant compliance enhancements, including technology upgrades, to ensure proper and continuous testing of securities not held in the Fund, but held in the Index. We also question how testing securities not held in a Fund would enhance investor protection.

The Proposed Rules create the possibility that ETFs could be delisted because of circumstances outside of their control, which would have significant consequences for ETF investors. We believe that the current rulemaking requires significant additional consideration in order to prevent harm to ETF investors, and therefore respectfully urge the exchanges and the Commission to withdraw or disapprove the Proposed Rules.

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³ See, e.g., Investment Company Act Release No. 27608 (December 21, 2006) (File No. 812-13208).

⁴ Many firms that publish indexes underlying ETFs have policies requiring client consultations prior to the implementation of index methodology changes. These consultations can be extensive, and take weeks or months to complete.

We thank the Commission for providing BlackRock the opportunity to express our concerns and provide our comments regarding the Proposed Rules. Please contact the undersigned if you have any questions or comments regarding BlackRock's views.

Sincerely,

Samara Cohen
Managing Director, U.S. Head of iShares Capital Markets

Joanne Medero
Managing Director, Government Relations & Public Policy

Deepa Damre
Managing Director, Legal & Compliance

cc:

The Honorable Michael S. Piwowar
Acting Chairman
Securities and Exchange Commission

The Honorable Kara M. Stein
Commissioner
Securities and Exchange Commission

Heather Seidel
Acting Director
Division of Trading and Markets
Securities and Exchange Commission

David Grim
Director
Division of Investment Management
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