

September 21, 2026

Division of Corporation Finance
United States Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Attn: Office of Chief Counsel

Re: No-Action Request Relating to Equity-Linked Structured Notes; Section 7 of the Securities Act of 1933

Dear Ladies and Gentlemen:

We seek confirmation from the Staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) regarding application of the abbreviated disclosure approach for equity-linked notes¹ to the offer of debt securities registered under the Securities Act of 1933, as amended (the “Securities Act”) referencing the performance of certain underlying securities (“Underlying Securities”) described below. We refer to these debt securities as “Structured Notes.”² Specifically, we respectfully request that the Staff concur with our view that a Structured Note referencing the performance of an exchange-traded fund (an “ETF”) would be eligible for abbreviated disclosure and that the disclosure elements described below are sufficient. We also request that the Staff clarify in the manner detailed below the seasoning period for issuers of Underlying Securities that are not yet eligible to use Securities Act Form S-3 or F-3. Last, we request that the Staff clarify a comparable abbreviated disclosure approach is acceptable in the context of offerings of Structured Notes referencing the performance of indices meeting specified criteria.

Exchange-Traded Funds

ETFs are subject to the registration requirements of the Securities Act and the Investment Company Act of 1940 (the “1940 Act”) and also are registered under Section 12 of the Securities Exchange Act of 1934 (the “Exchange Act”). ETF issuers file annual and semi-annual reports under Sections 13(a) and 15(d) of the Exchange Act. These reports include annual audited and semiannual unaudited financial statements.

¹ Set forth in the no-action letter issued to Morgan Stanley & Co., Inc. (avail. June 24, 1996) (the “MS Letter”).

² While the MS Letter refers to “Exchangeable Securities,” in intervening years, it has been understood to apply to notes referencing the performance of underlying securities more broadly. Accordingly, we use the term “Structured Notes” to reflect this broader application.

Listing on the NYSE Arca³ requires that an ETF satisfy the requirements of NYSE Arca Rule 5.2-E(j)(3), NYSE Arca Rule 5.2-E(j)(8) or NYSE Arca Rule 5.2-E(j)(9) (together, the “NYSE Arca ETF Rules”).⁴ The NYSE Arca ETF Rules impose eligibility and continued listing criteria for ETFs, including requirements related to an underlying index. The NYSE Arca ETF Rules also require that the underlying index demonstrate both market interest⁵ and public availability of information.⁶ The NYSE Arca ETF Rules have requirements to prevent the misuse of material non-public information.

Given the extensive regulatory scheme applicable to ETFs, we ask that the Staff confirm that, for purposes of a Structured Note prospectus in which an ETF is the Underlying Security, an ETF description that consists of the following elements satisfies the abbreviated disclosure requirement:

- The ETF’s name and a statement that it is a registered investment company.
- The name of the ETF’s reference index.
- The name of the ETF’s investment adviser or, if the ETF does not have an investment adviser, the ETF’s sponsor.
- The ETF’s investment objective or strategy.
- The ETF’s trading symbol and the applicable national securities exchange.
- The ETF’s CIK number and inception date.
- Disclosure about the availability of information with respect to the ETF, including an active hyperlink to the filing page through which investors may review the ETF’s filings.

Clarifying the Seasoning Period for Underlying Securities

The MS Letter provides that a Structured Notes issuer can rely on abbreviated disclosure about the issuer of the Underlying Securities if, in addition to having a class of equity securities registered under Section 12 of the Exchange Act, the issuer of the Underlying Securities is either (1) eligible to use Form S-3 or F-3 under the Securities Act for a primary offering of non-investment grade securities pursuant to General Instruction B.1 of such forms or (2) meets the listing criteria that an issuer of Underlying Securities would have to meet if

³ Nasdaq Rule 5704 and Cboe BZX Exchange, Inc. Rule 14.11(l) are substantially similar to the listing rules of the NYSE Arca so we have described only those of the NYSE Arca for simplicity. Accordingly, our request is applicable to U.S.-listed ETFs regardless of the relevant national securities exchange.

⁴ NYSE Arca Rule 5.2-E(j)(3) applies to any registered investment company; NYSE Arca Rule 5.2-E(j)(8) applies to ETFs that rely on Rule 6c-11; and NYSE Arca Rule 5.2-E(j)(9) applies to Class Exchange-Traded Fund Shares.

⁵ For example, NYSE Arca Rule 5.2-E(j)(3) requires a minimum of 100,000 shares outstanding of the ETF at commencement of trading. NYSE Arca Rule 5.2-E(j)(8) and NYSE Arca Rule 5.2-E(j)(9) require NYSE Arca to establish a minimum number of shares outstanding at the commencement of trading and require NYSE Arca to commence delisting proceedings if, after one year, there are fewer than 50 beneficial holders. The NYSE Arca Rule 5.2-E(j)(3) minimum diversification, market capitalization and trading volume parameters with respect to any underlying index also evidence market interest in ETF constituents. Similarly, compliance with Rule 6c-11 under NYSE Arca Rule 5.2-E(j)(8) and NYSE Arca Rule 5.2-E(j)(9) requires detailed parameters for constituents.

⁶ NYSE Arca Rule 5.2-E(j)(8) and NYSE Arca Rule 5.2-E(j)(9) require ongoing compliance with Rule 6c-11, including the disclosure conditions, and NYSE Arca Rule 5.2-E(j)(3) sets forth requirements for ongoing disclosures and pricing information, including that intraday indicative value of the shares of the ETF must be disseminated by a major market data vendor every 15 seconds during the NYSE Arca’s core trading session.

the Structured Notes were to be listed as equity-linked securities on a national securities exchange.⁷

While Form S-3 eligibility requires that an issuer have been a Reporting Company for at least 12 calendar months, the two prongs are alternatives and no clear seasoning period is specified in the listing criteria. The listing criteria simply require, in the case of a U.S. company that is either a Reporting Company or a registered investment company, that the Underlying Securities are listed on a national securities exchange and meet specified market capitalization and trading volume thresholds.⁸ We request that the Staff confirm that no seasoning period is necessary if the issuer of the Underlying Securities meets the listing criteria and has filed with the Commission all reports other than Current Reports on Form 8-K or Form 6-K required to be filed under Section 13 of the Exchange Act for the twelve calendar months or any portion thereof preceding the sale of the Structured Notes or such shorter period as the issuer of the Underlying Securities was required to file such reports.

Index Component Materiality Threshold and Abbreviated Disclosure

The MS Letter does not address indices. Given the passage of time since issuance of that guidance and the increased and ever-increasing importance of indices in our markets, a consistent, abbreviated disclosure approach to index-linked notes is useful. To that end, we ask that the Staff confirm that detailed disclosure of individual index constituents would not be required in respect of a Structured Note referencing the performance of a “Permissible Index.” For this limited purpose, a Permissible Index constitutes an index that: (1) is formulaic (rules-based) and does not involve discretion (as understood for purposes of Proposed Treasury Regulation Section 1.6011-16) and (2) consists only of components that either represent a weight of less than 10% of the overall index or in respect of which the structured notes issuer would be permitted to provide abbreviated disclosure pursuant to the MS Letter, as supplemented or updated in connection with this request.

We request that the Staff confirm that, in respect of a Permissible Index, an index description that consists of the following elements at a minimum will satisfy the abbreviated disclosure requirement:

- The index name.
- The index sponsor, index administrator, and calculation agent.
- A brief description of the method of calculating the index.
- A brief description of how the index constituents are selected, removed or replaced and of how the index is rebalanced.
- A brief description of how the index addresses the occurrence of corporate events.
- A brief description of how the index operates or is adjusted for market disruption events.
- A link to detailed publicly available information about the index.
- Either disclosure of the index’s major components or an active hyperlink to such disclosure on an index website.

⁷ The MS Letter references American Stock Exchange Rule 107.B, but market participants now look to NYSE Arca Rule 5.2-E(j)(2) for the applicable listing rules.

⁸ The NYSE Arca Rule 5.2-E(j)(2) trading volume thresholds specify a minimum number of shares traded in the preceding one-year period, but there is no requirement that a full year has elapsed since the relevant shares were listed for trading. A potential Underlying Security may exceed the trading volume threshold before it has been trading for a full year.

In each case in this letter where we reference an active hyperlink, we request that the Staff confirm that an issuer that includes an active hyperlink does not adopt the linked disclosure as its own but rather references third-party produced disclosure. Should you require additional information or wish to discuss this request further, we are available at your convenience. We appreciate your consideration of this matter and appreciate the Staff's time and attention.

Sincerely,

Marla L. Matusic
Anna T. Pinedo

cc: Bradley Berman