



DIVISION OF
TRADING AND MARKETS

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

July 22, 2025

Kevin Zambrowicz
Deputy General Counsel
Securities Industry and Financial Markets Association
1099 New York Avenue, 6th Floor
Washington, DC 20005

Re: Broker-Dealer Capital Charges in Connection with the Creation and Redemption of SEC-Registered Exchange-Traded Funds

Dear Mr. Zambrowicz:

This responds to your May 27, 2025 letter on behalf of the Securities Industry and Financial Markets Association ("SIFMA"). In your letter, SIFMA requests that the staff of the Division of Trading and Markets ("Staff") of the Securities and Exchange Commission ("Commission" or "SEC") not recommend enforcement action against a broker-dealer that does not deduct from its net capital temporary unsecured receivables that arise when a broker-dealer acts as an "Authorized Participant" for an exchange-traded fund ("ETF") that is registered with the Commission under the Investment Company Act of 1940 ("Investment Company Act"), when such ETF holds foreign securities¹ that are not cleared through an SEC-registered clearing agency under the circumstances set forth below.

¹ You state that the term "exchange-traded fund" is defined in Investment Company Act Rule 6c-11(a)(1) as an SEC-registered, open-end management company that issues and redeems "creation units" to authorized participants, and whose shares are listed on a national securities exchange. U.S.-regulated ETFs must comply with the federal securities laws, including Rules 6c-11 and 22e-4 under the Investment Company Act. For example, ETFs are subject to SEC disclosure requirements intended to promote investor protection and transparency. They must also implement written policies and procedures for basket construction to help prevent overreaching and abusive practices. See Exchange-Traded Funds, Investment Company Act Release No. 33646 (Sep. 25, 2019), 84 FR 57162 (Oct. 24, 2019).

In this letter, the term ETF includes not only such SEC-registered investment companies, but also exchange-listed, SEC-registered investment companies issuing redeemable shares, such as unit investment trusts, and SEC-registered open-end investment companies that either rely on Investment Company Act Rule 6c-11 or an SEC exemptive order. Although Investment Company Act Rule 6c-11(a)(1) uses the term "foreign investments," this letter uses the term "foreign securities." For the purposes of this letter, the two terms are intended to have the same meaning. See *id.*

ETF Creations

When a broker-dealer initiates an in-kind creation of ETF shares (“ETF Shares”), the broker-dealer must obtain and deliver Portfolio Securities² to the ETF. In the case of an ETF holding foreign securities, settlement of the ETF Share creation transaction occurs prior to a broker-dealer’s ability to settle the foreign securities transactions necessary to obtain and deliver the Portfolio Securities to the ETF. As a result, ETFs require a broker-dealer to post collateral with the ETF’s U.S. bank custodian (the “Bank Custodian”)³ to secure the broker-dealer’s obligation to deliver the Portfolio Securities to the ETF.

Where a broker-dealer cannot deliver Portfolio Securities before the ETF Share creation transaction settles, the following sequence of events occur:

- The broker-dealer delivers collateral (typically cash) to the ETF’s Bank Custodian in an amount equivalent to the market value of the ETF Shares being created (plus an agreed-upon cushion, if applicable) to secure the broker-dealer’s obligation to deliver the Portfolio Securities to the ETF.
- The ETF delivers the ETF Shares to the broker-dealer no later than the business day following the day of delivery of the collateral to the ETF’s Bank Custodian. In the meantime, the broker-dealer is purchasing the Portfolio Securities in the relevant local markets and instructs its custodian(s) to deliver the Portfolio Securities to the ETF.
- Once the ETF has received the Portfolio Securities, the ETF instructs its Bank Custodian to return the collateral to the broker-dealer.
- The Bank Custodian returns the broker-dealer’s collateral (including any agreed-upon cushion, if applicable) for each respective Portfolio Security to the broker-dealer by the business day following the delivery of the Portfolio Security to the ETF. The broker-dealer will typically receive its full collateral within four business days from the initial delivery day of the collateral based on current global settlement cycles.⁴

ETF Redemptions

When a broker-dealer effects a redemption of ETF Shares where the Portfolio Securities include foreign securities, the ETF must give irrevocable instructions to the relevant foreign

² In this letter, “Portfolio Securities” refers to the underlying securities of the ETF in the appropriate weightings of unit size.

³ For purposes of this letter, the term “bank” is given the meaning provided by Section 3(a)(6) of the Securities Exchange Act of 1934 (the “Exchange Act”).

⁴ In certain local (*i.e.*, non-U.S.) securities markets, extended settlement cycles and business holidays may delay the broker-dealer’s receipt of a portion of its collateral beyond the fourth business day. The Staff notes that you are not seeking and the Staff is not granting relief with respect to collateral returned to the broker-dealer after the fourth business day.

clearing system at least one business day before the clearing system can transfer the Portfolio Securities constituting the redemption basket to the broker-dealer. However, the ETF cannot give the clearing system instructions to deliver the Portfolio Securities unless it has first received either the relevant ETF Shares or sufficient collateral from the broker-dealer.

Where a broker-dealer cannot deliver the ETF Shares that it is redeeming before the ETF must send irrevocable instructions to the clearing system, the following sequence of events occur:

- The broker-dealer delivers collateral (typically cash) to the ETF's Bank Custodian in an amount equivalent to the market value of the ETF Shares being redeemed (plus an agreed-upon haircut or cushion, as applicable) to secure the broker-dealer's obligation to deliver the ETF Shares.
- Once the ETF has received the ETF Shares to be redeemed or sufficient collateral in respect thereof, the ETF submits to the relevant foreign clearing system irrevocable instructions to deliver the underlying securities directly to the broker-dealer's securities account by the fourth business day after the day on which the broker-dealer originally delivered the collateral in respect of the ETF Shares.⁵
- If the broker-dealer delivered collateral to the ETF's Bank Custodian in lieu of delivering the ETF Shares, when the broker-dealer delivers the ETF Shares to the ETF, the ETF's Bank Custodian returns the collateral to the broker-dealer either on the same business day or the next business day.

From the perspective of the broker-dealer involved in the creation or redemption of ETF Shares, the delivery of collateral to the Bank Custodian in the case of an ETF creation, or of ETF Shares and/or collateral in the case of an ETF redemption, takes place without the simultaneous transfer of assets back to the broker-dealer (*i.e.*, free of payment). These deliveries introduce timing mismatches, as the broker-dealer does not receive corresponding assets at the same time as the delivery of collateral, Portfolio Securities, or ETF Shares, which creates an unsecured receivable pursuant to paragraph (c)(2)(iv)(E) of Exchange Act Rule 15c3-1 ("Rule 15c3-1").⁶

The Staff notes that you are not seeking and the Staff is not granting relief with respect to creations and redemptions involving ETFs that only hold securities settled through an SEC-registered clearing agency ("U.S. Securities") as, in such case, the ETF Shares being created and redeemed and the underlying U.S. Securities delivered on the creations and redemptions can be

⁵ Consistent with the statements in footnote 4 above, extended settlement cycles and business holidays in various local securities markets may delay a broker-dealer's receipt of certain Portfolio Securities beyond the fourth business day. The Staff notes that you are not seeking and the Staff is not granting relief with respect to Portfolio Securities returned to the broker-dealer after such date.

⁶ See 17 CFR 240.15c3-1(c)(2)(iv)(E).

transferred simultaneously between the ETF and the broker-dealer on the regular-way settlement date for the transactions.

Relief Request

Based upon the representations set forth in your letter, the Staff will not recommend enforcement action to the Commission against a broker-dealer that does not take a net capital charge under paragraph (c)(2)(iv)(E) of Rule 15c3-1 with respect to an unsecured receivable arising from the creation or redemption of ETF Shares, when the ETF holds foreign securities that are not cleared through an SEC-registered clearing agency, under the following circumstances:

- (1) For an ETF creation, the broker-dealer receives: the return of its collateral by the fourth business day after the day on which the broker-dealer initially delivered the collateral in respect of the Portfolio Securities;
- (2) For an ETF redemption, the broker-dealer receives: (i) the Portfolio Securities; and (ii) the return of its collateral, both by the fourth business day after the day on which the broker-dealer initially delivered the collateral in respect of the ETF Shares;
- (3) During any ETF creation or redemption and until completion, the Bank Custodian continues to hold any collateral of the broker-dealer; and
- (4) The amount of the unsecured receivable does not exceed (a) 10% of the broker-dealer's tentative net capital with respect to any single ETF creation or redemption, and (b) 25% of the broker-dealer's tentative net capital in the aggregate across all ETF creations and redemptions.

This letter is a Staff position and is based strictly on the facts and representations stated in your request. Any different facts or representations from those set forth in your request may require a different response. Furthermore, this response expresses the Staff's position on enforcement action only and does not purport to express any legal conclusions on the questions presented. The Staff expresses no view with respect to any other questions that the proposed activities may raise, including the applicability of any other federal, state, or foreign laws. This position is subject to modification or revocation at any time. If you have any questions regarding the letter, please call the Division of Trading and Markets at 202-551-5777.

Sincerely,

A handwritten signature in cursive script, reading "Raymond A. Lombardo".

Raymond A. Lombardo
Assistant Director

CC: Mark Attar, Stradley Ronon Stevens & Young, LLP



May 27, 2025

Mr. Michael A. Macchiaroli, Esq.
Associate Director
U.S. Securities and Exchange Commission
Division of Trading and Markets
100 F Street NE
Washington, D. C. 20549

Re: Broker-Dealer Capital Charges in Connection with the Creation and Redemption of SEC-Registered Exchange-Traded Funds

Dear Mr. Macchiaroli:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ requests that the staff (“Staff”) of the Securities and Exchange Commission (“Commission” or “SEC”) not recommend enforcement action against a broker-dealer that does not deduct from its net capital temporary unsecured receivables that arise when a broker-dealer acts as an “Authorized Participant” (“AP”) for an exchange-traded fund (“ETF”) that is registered with the Commission under the Investment Company Act of 1940 (“Investment Company Act”), when such ETF holds foreign securities² that are not cleared through an SEC-registered clearing agency under the circumstances set forth below.

¹ SIFMA is the leading trade association for broker-dealers, investment banks, and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s one million employees, we advocate on legislation, regulation, and business policy, affecting retail and institutional investors, equity and fixed income markets, and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

² The term “exchange-traded fund” is defined in Investment Company Act Rule 6c-11(a)(1) as an SEC-registered, open-end management company that issues and redeems “creation units” to APs, and whose shares are listed on a national securities exchange. U.S.-regulated ETFs must comply with the federal securities laws, including Rules 6c-11 and 22e-4 under the Investment Company Act. For example, ETFs are subject to SEC disclosure requirements intended to promote investor protection and transparency. They must also implement written policies and procedures for basket construction to help prevent overreaching and abusive practices. See Exchange-Traded Funds, Investment Company Act Release No. 33646 (Sep. 25, 2019), 84 FR 57162 (Oct. 24, 2019).

Discussion

ETF Creations

When a broker-dealer initiates an in-kind creation of ETF shares (“ETF Shares”), the broker-dealer must obtain and deliver Portfolio Securities³ to the ETF. In the case of an ETF holding foreign securities, settlement of the ETF Share creation transaction occurs prior to a broker-dealer’s ability to settle the foreign securities transactions necessary to obtain and deliver the Portfolio Securities to the ETF. As a result, ETFs require a broker-dealer to post collateral with the ETF’s U.S. bank custodian (the “Bank Custodian”)⁴ to secure the broker-dealer’s obligation to deliver the Portfolio Securities to the ETF.

Where a broker-dealer cannot deliver Portfolio Securities before the ETF Share creation transaction settles, the following sequence of events occur:

- The broker-dealer delivers collateral (typically cash) to the ETF’s Bank Custodian in an amount equivalent to the market value of the ETF Shares being created (plus an agreed-upon cushion, if applicable) to secure the broker-dealer’s obligation to deliver the Portfolio Securities to the ETF.
- The ETF delivers the ETF Shares to the broker-dealer no later than the business day following the day of delivery of the collateral to the ETF’s Bank Custodian. In the meantime, the broker-dealer is purchasing the Portfolio Securities in the relevant local markets and instructs its custodian(s) to deliver the Portfolio Securities to the ETF.
- Once the ETF has received the Portfolio Securities, the ETF instructs its Bank Custodian to return the collateral to the broker-dealer.
- The Bank Custodian returns the broker-dealer’s collateral (including any agreed-upon cushion, if applicable) for each respective Portfolio Security to the broker-dealer by the business day following the delivery of the Portfolio Security to the ETF. The broker-

In this letter, the term ETF includes not only such SEC-registered investment companies, but also exchange-listed, SEC-registered investment companies issuing redeemable shares, such as unit investment trusts, and SEC-registered open-end investment companies that either rely on Investment Company Act Rule 6c-11 or an SEC exemptive order. Although Investment Company Act Rule 6c-11(a)(1) uses the term “foreign investments,” this letter uses the term “foreign securities.” For the purposes of this letter, the two terms are intended to have the same meaning. *Id.*

³ “Portfolio Securities” refers to the underlying securities of the ETF in the appropriate weightings of unit size.

⁴ For purposes of this letter, the term “bank” is given the meaning provided by Section 3(a)(6) of the Securities Exchange Act of 1934 (the “Exchange Act”).

dealer will typically receive its full collateral within four business days from the initial delivery day of the collateral based on current global settlement cycles.⁵

ETF Redemptions

When a broker-dealer effects a redemption of ETF Shares where the Portfolio Securities include foreign securities, the ETF must give irrevocable instructions to the relevant foreign clearing system at least one business day before the clearing system can transfer the Portfolio Securities constituting the redemption basket to the broker-dealer. However, the ETF cannot give the clearing system instructions to deliver the Portfolio Securities unless it has first received either the relevant ETF Shares or sufficient collateral from the broker-dealer.

Where a broker-dealer cannot deliver the ETF Shares that it is redeeming before the ETF must send irrevocable instructions to the clearing system, the following sequence of events occur:

- The broker-dealer delivers collateral (typically cash) to the ETF's Bank Custodian in an amount equivalent to the market value of the ETF Shares being redeemed (plus an agreed-upon haircut or cushion, as applicable) to secure the broker-dealer's obligation to deliver the ETF Shares.
- Once the ETF has received the ETF Shares to be redeemed or sufficient collateral in respect thereof, the ETF submits to the relevant foreign clearing system irrevocable instructions to deliver the underlying securities directly to the broker-dealer's securities account by the fourth business day after the day on which the broker-dealer originally delivered the collateral in respect of the ETF Shares.⁶
- If the broker-dealer delivered collateral to the ETF's Bank Custodian in lieu of delivering the ETF Shares, when the broker-dealer delivers the ETF Shares to the ETF, the ETF's Bank Custodian returns the collateral to the broker-dealer either on the same business day or the next business day.

Request for Relief

From the perspective of the broker-dealer involved in the creation or redemption of ETF Shares, the delivery of collateral to the Bank Custodian in the case of an ETF creation, or of ETF Shares and/or collateral in the case of an ETF redemption, takes place without the simultaneous transfer

⁵ In certain local (*i.e.*, non-U.S.) securities markets, extended settlement cycles and business holidays may delay the broker-dealer's receipt of a portion of its collateral beyond the fourth business day. We are not seeking relief with respect to collateral returned to the broker-dealer after the fourth business day.

⁶ Consistent with the discussion in footnote 5 above, extended settlement cycles and business holidays in various local securities markets may delay a broker-dealer's receipt of certain Portfolio Securities beyond the fourth business day. We are not seeking relief with respect to Portfolio Securities returned to the broker-dealer after such date.

of assets back to the broker-dealer (*i.e.*, free of payment). These deliveries introduce timing mismatches, as the broker-dealer does not receive corresponding assets at the same time as the delivery of collateral, Portfolio Securities, or ETF Shares, which creates an unsecured receivable pursuant to paragraph (c)(2)(iv)(E) of Exchange Act Rule 15c3-1 (“Rule 15c3-1”).⁷

Based on the foregoing, and the crucial role that APs play in providing investors with liquidity in the ETF market, SIFMA requests that the Staff not recommend enforcement action to the Commission against a broker-dealer that does not take a net capital charge under paragraph (c)(2)(iv)(E) of Rule 15c3-1 with respect to an unsecured receivable arising from the creation or redemption of ETF Shares, when the ETF holds foreign securities that are not cleared through an SEC-registered clearing agency, under the following circumstances:

- (1) For an ETF creation, the broker-dealer receives: the return of its collateral by the fourth business day after the day on which the broker-dealer initially delivered the collateral in respect of the Portfolio Securities;
- (2) For an ETF redemption, the broker-dealer receives: (i) the Portfolio Securities; and (ii) the return of its collateral, both by the fourth business day after the day on which the broker-dealer initially delivered the collateral in respect of the ETF Shares;⁸ and
- (3) During any ETF creation or redemption and until completion, the Bank Custodian continues to hold any collateral of the broker-dealer.

This relief is further limited to instances where the amount of any unsecured receivable does not exceed 10% of the broker-dealer’s tentative net capital with respect to any single ETF creation or redemption, and (ii) 25% of the broker-dealer’s tentative net capital in the aggregate across all ETF creations and redemptions.

We are not seeking relief with respect to creations and redemptions involving ETFs that only hold securities settled through an SEC-registered clearing agency (“U.S. Securities”) as, in such case, the ETF Shares being created and redeemed and the underlying U.S. Securities delivered on the creations and redemptions may be transferred simultaneously between the ETF and the broker-dealer on the regular-way settlement date for the transactions.

ETFs operate under the same SEC requirements as do all open-end funds (*i.e.*, mutual funds). Further, the ETF would not be permitted to treat the collateral provided by the broker-dealer as belonging to the ETF; rather, such collateral would be kept separate and segregated by the Bank Custodian from the proprietary assets of the ETF. It is important to note that the collateral is never delivered to the ETF itself.

⁷ See 17 CFR 240.15c3-1(c)(2)(iv)(E).

⁸ If the broker-dealer does not receive the collateral or Portfolio Securities within four business days of delivering the collateral, the net capital deduction only applies to the specific unreturned collateral or Portfolio Securities.

We also observe that the Staff has, in a number of different situations, granted relief with respect to certain net capital charges to take account of the fact that U.S. and foreign securities markets do not operate on the same time schedules, or sometimes on the same business days. For example, in the case of security-based swap transactions with non-U.S. counterparties that are more than four time zones away, the SEC allows an SEC-registered security-based swap dealer an additional day to collect margin before it is required to take a net capital charge.⁹

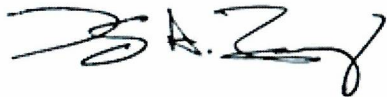
The net capital charges discussed above currently disincentivize and deter broker-dealers from participating in this segment of the ETF market. This, in turn, results in market inefficiencies and makes it more difficult for investors to buy and sell ETFs that hold foreign securities. The recent transition from the T+2 to T+1 settlement cycle has amplified these issues. For example, the shorter settlement cycle for ETF creations necessitates more frequent collateral postings to the ETF's Bank Custodian due to the earlier settlement of ETF Shares as compared to the settlement of the underlying Portfolio Securities. Given the magnitude of the net capital charges for ETF creations and redemptions, SIFMA is concerned that, without relief, these deterrents will lead to a further decrease in broker-dealer involvement, heightened inefficiencies, and increased challenges for investors.

Conclusion

We appreciate the Staff's consideration of our request for relief based on our belief that broker-dealers acting as APs should not be required to take net capital charges with respect to unsecured receivables in connection with the ordinary course creations and redemptions of ETFs holding foreign securities under the circumstances described above.

Thank you for this opportunity to provide you with our concerns and request for exemptive relief. We would be pleased to discuss our views or provide any additional information. Please contact me at 202-962-7386 or Mark Attar of Stradley Ronon Stevens & Young, LLP, who assisted in the preparation of this letter, at 202-419-8406, if you have any questions.

Regards,



Kevin Zambrowicz
Deputy General Counsel & Managing Director, SIFMA

⁹ See 17 CFR 240.18a-3(c)(1)(ii).

cc: David Saltiel, Acting Director, SEC Division of Trading and Markets
Raymond Lombardo, Assistant Director, SEC Division of Trading and Markets
Timothy Fox, Senior Special Counsel, SEC Division of Trading and Markets
Joseph Levinson, Senior Special Counsel, SEC Division of Trading and Markets
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