

**TO: ETP Holders**

**FROM: NYSE Regulation, Inc.**

**SUBJECT: Regulation M - Notification Requirements for Offering Participants**

### **I. Purpose**

The purpose of this Regulatory Bulletin is to inform NYSE Arca Equities, Inc. ("NYSE Arca" or "Exchange") ETP Holders of the following rule change recently adopted by the Exchange:

- Replacement of NYSE Arca Equities Rule 5.2(b)(1) (Notification Requirements for Offering of Securities) with new Rule 5190 (Notification Requirements for Offering Participants)

**These rule changes are effective immediately.<sup>1</sup>**

### **II. Overview**

In order to further harmonize Exchange Rules with both Financial Industry Regulatory Authority, Inc. ("FINRA") Rules and New York Stock Exchange, LLC ("NYSE") Rules, the Exchange replaced Rule 5.2(b)(1) with Rule 5190. Further, this rule change also helps reduce duplicative reporting requirements for ETP Holders who are also FINRA and/or NYSE members. To this end, ETP Holders are advised that they are not required to submit a Regulation M ("Reg M") notification to the Exchange if they have already provided a notification to FINRA or NYSE pursuant to their respective rules, also numbered 5190.

### **III. Description of Rule Changes**

Notification Requirements for Offering Participants

The Exchange replaced NYSE Arca Rule 5.2(b)(1) (Notification Requirements for Offering of Securities) with new Rule 5190 (Notification Requirements for Offering Participants).

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<sup>1</sup> See Securities Exchange Act Release No. 66311 (Feb. 2, 2012) (SR-NYSEArca-2012-07).

Similar to the previous Exchange Rule 5.2(b)(1), the new Rule 5190 requires, in part, that an ETP Holder acting as a manager (or in a similar capacity) of an offering to provide the following information:

- (A) the ETP Holder's determination as to whether a one-day or five-day restricted period applies under Rule 101 of SEC Regulation M and the basis for such determination, including the contemplated date and time of the commencement of the restricted period, the listed security name and symbol, and identification of the distribution participants and affiliated purchasers, no later than the business day prior to the first complete trading session of the applicable restricted period, unless later notification is necessary under specific circumstances;
- (B) the pricing of the distribution, including the listed security name and symbol, the type of security, the number of shares offered, the offering price, the last sale before the distribution, the pricing basis, the SEC effective date and time, the trade date, the restricted period, and identification of the distribution participants and affiliated purchasers, no later than the close of business the next business day following the pricing of the distribution, unless later notification is necessary under specific circumstances; and
- (C) the cancellation or postponement of any distribution for which prior notification of commencement of the restricted period has been submitted under paragraph (c)(1)(A) above, immediately upon the cancellation or postponement of such distribution. If no ETP Holder is acting as a manager (or in a similar capacity) of such distribution, then each ETP Holder that is a distribution participant or affiliated purchaser shall provide the notice required under this paragraph (c)(1), unless another ETP Holder has assumed responsibility in writing for compliance therewith.

Notification may be satisfied via third-party data communication facilitators, such as I-Deal or Dealogic, or emailed directly to the Regulatory Trading Official Desk at [rto@finra.org](mailto:rto@finra.org). Further, ETP Holders who notify either FINRA or NYSE of offerings, pursuant to their respective rules 5190, will have satisfied the notification requirements of Exchange Rule 5190.<sup>2</sup> ETP Holders, therefore, need not make duplicative filings to the Exchange if NYSE or FINRA have already been notified.

The Exchange urges ETP Holders to carefully review Regulation M and Exchange Rule 5190 to ensure that their policies and procedures comply with its requirements.

#### **IV. Contacts**

Questions concerning these rule changes may be addressed to the following:

- Kyle Morse, Vice President, FINRA Market Regulation, at (312) 442-7785, or
- Clare Saperstein, Managing Director, NYSE Regulation Inc., at (212) 656-2355

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On June 14, 2010, FINRA and the Exchange entered into a Regulatory Services Agreement that sets forth, pursuant to the Statement of Work, certain regulatory services including surveillance and investigation functions.