FREQUENTLY ASKED QUESTIONS ABOUT EXCHANGE-TRADED NOTES

Understanding Exchange-Traded Notes

What are Exchange-Traded Notes?

Exchange-Traded Notes ("ETNs") are senior unsecured debt obligations that are listed on a national securities exchange. ETNs provide a return to investors based on the performance of an underlying reference asset. Under the applicable listing rules, an ETN may be linked to equity indices, commodities, currencies, fixed income securities, futures or any combination of two or more of these reference assets.

Who issues ETNs?

ETNs generally are issued by companies registered with the Securities and Exchange Commission (the "SEC") that are bank holding companies or banks.

What is the difference between a listed debt security and an ETN?

A typical listed debt security is issued and then settles within two or three business days, after which no more securities with the same CUSIP number are issued, unless the issuance is "reopened." In contrast, an ETN is usually in continuous distribution; *i.e.*, the issuer continues to sell the ETNs after the initial issuance and settlement. For example, an ETN issuer may use a prospectus for $100,000,000 of ETNs and sell only $4,000,000 principal amount of ETNs (the minimum amount to satisfy the NYSE Arca listing requirements) on the initial trade date. After the initial trade date, the ETN issuer can continue to issue new ETNs ("creations") up to the full prospectus amount, as additional investors purchase the ETNs.

Listing ETNs on a National Securities Exchange

Where are ETNs listed?

ETNs are listed on the NYSE Arca and the Nasdaq. The BATS Exchange also permits the listing of ETNs.

Source: NYSE Arca Rule 5.2-E(j)(6); Nasdaq Rule 5710; BATS Exchange Rule 14.11(d).

What types of underlying reference assets are permitted for ETNs?

Under the NYSE Arca listing rules, an ETN may be linked to any of the following:

- an index, or indices, of equity securities (an "Equity Reference Asset");
- one or more physical commodities or commodities futures, options or other commodity derivatives or commodity-based

trust shares or a basket or index of any of the foregoing (a "Commodity Reference Asset");

- one or more currencies, or options or currency futures or other currency derivatives or currency trust shares or a basket or index of any of the foregoing (a "Currency Reference Asset");
- one or more indices or portfolios of notes, bonds, debentures or evidences of indebtedness that include, but are not limited to, U.S. Treasury securities ("Treasury Securities"), government-sponsored entity securities ("GSE Securities"), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof or a basket or index of any of the foregoing (a "Fixed Income Reference Asset");
- an index of (a) futures on Treasury Securities, GSE Securities, supranational debt and debt of a foreign country or a subdivision thereof, or options or other derivatives on any of the foregoing; or (b) interest rate futures or options or derivatives on the foregoing; or (c) CBOE Volatility Index (VIX) Futures or (d) EURO STOXX 50 Volatility Index (VSTOXX) Futures (a "Futures Reference Asset"); or
- any combination of two or more Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets or Futures Reference Assets (a "Multifactor Reference Asset"). A Multifactor Reference Asset may include as a component a notional investment in cash or a cash equivalent based on a widely accepted overnight loan interest rate, LIBOR, Prime Rate, or an implied interest rate based on observed market spot and foreign currency forward rates.

The Nasdaq and BATS listing rules for permissible underlying assets are substantially the same as those permitted by the NYSE Arca. A Futures Reference Asset under Nasdaq Listing Rule 5710 does not include EURO STOXX 50 Volatility Index (VSTOXX) Futures.

Source: NYSE Arca Rule 5.2-E(j)(6)(i)-(vi); Nasdaq Rule 5710; BATS Rule 14.11(d).

Are there any other listing requirements for ETNs?

Yes. The NYSE Arca listing rules require that ETNs and their issuers meet the following requirements, provided that the ETNs are redeemable at the option of the holders on at least a weekly basis:

- a minimum principal amount/market value outstanding of at least $4 million;
- a minimum term of one year but not greater than 30 years;
- no leverage exceeding negative 3x;
- the ETNs are not convertible;
- minimum total assets and tangible net worth requirements as to the issuer; and
- the issuer is in compliance with Rule 10A-3 under the Exchange Act (audit committee requirements).

In addition, there are generic listing requirements for each permissible underlying reference asset, and continued listing requirements for each such reference asset. The continued listing standards generally require that the ETNs maintain a minimum market value of outstanding ETNs and the continued publication in at least 15-second intervals of the value of the underlying reference asset.

The exchange will also require that a supplemental listing application be completed and that a Form 8-A be filed with the SEC for the ETN prior to approving the listing application. (Once an ETN is registered under Section 12(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), the ETN should be listed on the front cover of the issuer's Annual Report on Form 10-K, 20-F or 40-F, as the case may be, under the column "Securities registered pursuant to Section 12(b) of the Act.")

Source: NYSE Arca Rule 5.2-E(j)(6)(A).

Can an underlying index be modified after an ETN is listed?

Yes; however, care must be taken to ensure that the NYSE is informed in advance of any material change to an underlying reference asset, such as an equity index. The NYSE requires a minimum ten business day advance notice to the exchange by the issuer if any of the following "Material Index or Portfolio Changes" to an underlying index are scheduled to occur:

- the value of the index is no longer calculated or available and a new index is substituted;
- the index is replaced with a new index from the same or a different index provider; or
- the index is significantly modified (including, but not limited to, a significant modification to the index methodology, a change in the index provider or a change in control of the index provider).

A prospective change that constitutes a Material Index or Portfolio Change likely would require the issuer to submit to the NYSE a supplemental listing application, as well as a certified copy of the board resolution authorizing the change, and may also require the issuer to make a public announcement of the change by means of a press release, as provided by NYSE Arca Rule 5.3-E(i)(2)(viii) (Immediate Public Disclosure of Material Information). If the prospective Material Index or Portfolio Change would cause the underlying index to no longer meet the NYSE Arca's generic listing standards, which are set forth in NYSE Arca Rule 5.2-E(j)(6), then, in order for the ETN to remain listed, a rule filing under Section 19(b)(2) of the Exchange Act would be required. Given that a 19(b)(2) filing is generally an extremely lengthy (and potentially expensive) process, if the prospective change is scheduled to take place prior to SEC approval of the 19(b)(2) filing, then the NYSE would direct that trading in the ETN be halted on the date of the change. If it becomes clear to the NYSE that the 19(b)(2) filing will not be approved or will not become effective, or the NYSE decides to withdraw the 19(b)(2) filing, then the NYSE will delist the ETN.

Source: NYSE Arca Rule 5.3-E(i)(1)(i)(P); NYSE Arca Rule 5.1-E(b)(17). The NYSE Arca's guidance on Rule 5.3-E(i)(1)(i)(P) can be found at: https://www.nyse.com/publicdocs/nyse/listing/index_change_guidance_letter_08_22_2013.pdf. *See also* Nasdaq Listing Rules 5005(a)(40) and 5701(b).

Features Common to ETNs

How do ETN payoffs operate?

If ETNs are held to maturity, then, in accordance with the terms of the ETN, ETN holders would typically receive a cash payment equal to the principal amount of the ETNs multiplied by the applicable "index factor," less any applicable investor fee.

An "index factor" on any given day is typically the ratio of the closing value of the relevant index on that day over the closing value of that index on the original pricing date of the ETNs. The "investor fee" is typically a stated percentage per annum, multiplied by the principal amount of the ETNs, multiplied by the index factor, calculated daily.

How do leveraged ETN payoffs operate?

Leveraged ETNs (whether long or inverse (short)) have a daily or monthly reset feature. For these ETNs, the "Current Principal Amount" is reset and recalculated on a daily or monthly basis. Leveraged ETNs with a reset feature also use an "index performance ratio," which is a comparison of the index closing level on the reset day as compared to either the previous day's or month's level.

For ETNs with a reset feature, rather than the note measuring against the index closing level at the initial trade date in order to calculate the principal amount, the value of the ETN, using the Current Principal Amount, is measured against a daily or monthly index closing level. Consequently, even if the index closing level at a month-end is higher than the index closing level on the initial trade date, the Current Principal Amount will be reset based on the change in the index closing level from the previous month. If the index closing level on the reset date is lower than the index closing level at the last month's reset date, the Current Principal Amount will decrease, even if the index closing level on the reset date is higher than the index closing level on the initial trade date.

What is the advantage of investing in an ETN as opposed to a structured note linked to the same underlying asset?

The principal advantages are liquidity and the ability to redeem at any time. Although investors can invest in structured notes linked to any of the underlying assets available for ETNs, unlisted structured notes are generally illiquid and designed to be held until maturity. In contrast, most ETNs have an active secondary market with an easily ascertainable resale price. It is rare for a structured note to have an investor put feature.

In addition, an ETN may be virtually the only way for an investor to access a particular asset class. For example, an issuer may link an ETN to a proprietary index that reflects a particular investment view or strategy.

What if a holder wants to dispose of its ETN prior to maturity?

ETNs may be sold (or purchased) throughout the trading day on the applicable exchange, or over-the-counter at negotiated prices.

An ETN holder may also tender its ETN for redemption on at least a weekly basis (most ETNs provide for daily redemption) in large minimum amounts specified by the issuer in the terms of the ETN. Upon redemption, the redeeming holder would receive a cash payment equal to the principal amount of the ETNs being redeemed, multiplied by the applicable index factor, and less any applicable investor fee and/or redemption fee.

What does the issuer do with the redeemed ETNs?

Some issuers cancel redeemed ETNs. Others put the redeemed ETNs back into their inventories and resell them to new investors.

Is the ETN holder exposed to any risk when it requests that the issuer redeem its ETN?

Yes. Because the valuation of the ETN used by the issuer to determine the redemption price normally occurs at the end of the business day following the receipt of the ETN holder's redemption request, the holder is exposed to market risk once a properly submitted redemption request is received by the issuer. If, for example, the ETN is trading at a discount (the trading price is less than the indicative value) and an ETN holder exercises its redemption right, if the trading price increases during the day after the redemption request is accepted, the ETN holder will have lost the opportunity to take advantage of the discount.

What happens if an issuer sells the full prospectus amount of the ETNs?

Issuers that sell the full amount of ETNs listed in the prospectus can reopen the ETN. This may happen when there is demand for ETNs and the issuer has no more ETNs (including previously repurchased or redeemed ETNs) in its inventory.

The issuer will then file an amended prospectus with the SEC for an additional amount of new ETNs. The issuer will also have to execute a new note for the full amount of ETNs to be issued under the new prospectus.

Regulation M and Distribution Issues

Does the continuous distribution of an ETN combined with issuer redemptions violate Regulation M?

It would, absent no-action relief from the SEC. Issuers of ETNs are regularly "creating," or issuing, new ETNs, and reselling ETNs that have been previously repurchased. Due to the ongoing creations, the "restricted period" of the ETNs, for purposes of Regulation M, does not end until the ETN is called or matures. The affiliated broker-dealers of ETN issuers engage in market-making activities in the ETNs, purchasing and selling ETNs in the market. Absent regulatory relief, redemptions by the issuer and market-making bids and purchases by the affiliated broker-dealer during an ongoing distribution (the restricted period) would constitute impermissible market manipulation in violation of Regulation M.

Persons who are deemed to be participating in a distribution of ETNs rely on the no-action position regarding Rule 101 of Regulation M provided by the Barclays Bank PLC, Staff No-Action Letter (July 27, 2006) (the "iPath Letter"), which permits such persons to bid for or purchase ETNs (market-making activities) during their participation in the distribution. The iPath Letter based the position "particularly [on the representations that the ETNs] are redeemable at the option of the holder on a weekly basis (in quantities of 50,000 or more) and that the secondary market price of [the ETNs] should not vary substantially from the value of the relevant underlying index."

Issuers and their affiliated purchasers rely on the no-action position regarding Rule 102 of Regulation M provided by the iPath Letter, which permits ETN issuers and their affiliated purchasers to redeem ETNs while engaged in a continuous offering of ETNs.

Source: A copy of the iPath Letter may be found here.

Are there other factors in the iPath Letter that influence the way ETNs are distributed?

Yes. Although the Regulation M relief provided by the iPath Letter was based on the ETN holders' ability to redeem the ETNs on a weekly basis, other factors were considered in the iPath Letter that are critical to addressing the SEC's concerns about price manipulation due to issuer redemptions and affiliates' market-making activities. Those factors are:

- real time (every 15 seconds) publicly available pricing information for the ETNs, due to their exchange listing;
- real time publicly available levels/prices of the underlying reference asset, due to the NYSE Arca listing requirements;
- publication by the issuer of the ETN's closing indicative value; and
- the activities of arbitrageurs and their ability to redeem or purchase ETNs to take advantage of price differentials between the trading price of the ETN and the value of its underlying reference asset.

Valuation of ETNs

What is an ETN's "indicative value"?

The intraday and closing indicative values, which are values of the ETN based on intraday and closing underlying reference asset values, respectively, take into account the applicable investor fees at the time of calculation. They are used by market participants as an approximation of the redemption value of an ETN (without giving effect to any redemption fee) or the payment at maturity, assuming maturity occurred at the time of the calculation of the indicative value. Intraday indicative values are publicly available and published in real time by ETN issuers. The formula for calculating the intraday and closing indicative value is included in the ETN pricing supplement, and does not take into account the effect of supply and demand for the ETNs. For certain daily reset leveraged ETNs, the intraday indicative value may not take into account intraday changes in leverage.

Are issuers required to disclose an ETN's indicative value?

For four out of the six categories of underlying reference assets allowed by the NYSE Arca, the issuer is required to publish the intraday indicative value of the ETN. Also, in the iPath Letter, the issuer said that it would publish the closing indicative value of the ETN (in addition to the publication by a service of the intraday indicative values). Consequently, ETN issuers publish the indicative value of the ETN, no matter which underlying reference asset is used.

Source: iPath Letter at p. 4, paragraph (I)(f)(2). The NYSE Arca listing rules require that an indicative value be calculated and widely disseminated at least every 15 seconds for ETNs linked to a Commodity Reference Asset, Currency Reference Asset, Futures Reference Asset or a Multifactor Reference Asset. NYSE Arca Rule 5.2-E(j)(6)(B)(II)(1)(b)(ii); 5.2-E(j)(6)(B)(III)(1)(b)(ii); 5.2-E(j)(6)(B)(V)(1)(b)(ii); and 5.2-E(j)(6)(B)(VI)(2)(b). Nasdaq Rule 5710 requires that an indicative value be calculated at least every 15 seconds for ETNs linked to a

Commodity Reference Asset, Futures Reference Asset or a Multifactor Reference Asset. Nasdaq Rule 5710 (g)(v); 5710(k)(IV)(b)(ii); and 5710(k)(v)(B)(2). The BATS listing rules have the same requirements as Nasdaq Rule 5710. BATS Rule 14.11(d)(2)(G)(v); 14.11(d)(2)(K) (iv)(b)(2); and 14.11(d)(2)(K)(v)(b)(2).

How do these various ETN prices relate to each other, and how do they help investors?

In deciding whether to buy, hold, redeem or sell an ETN, an investor will typically compare these prices:

- the trading price of the ETN on the relevant exchange;
- the indicative value of the ETN, the formula for which is included in the ETN pricing supplement, published at least every 15 seconds;
- the redemption price of the ETN, the formula for which is included in the ETN pricing supplement; and
- the level or price of the underlying reference asset, published at least every 15 seconds.

Using these prices, an investor may:

- purchase an ETN on an exchange or over-the-counter when the trading price is at a discount to the intraday indicative value;
- sell its ETN on an exchange or over-the-counter when the trading price is at a premium to the intraday indicative value; or
- redeem an ETN that it purchased on an exchange or over-the-counter when it was trading at a discount to the intraday indicative value.

In an orderly market, these activities, whether by arbitrageurs or other investors, tend to keep the trading price of an ETN close to its intraday indicative value. However, there is no assurance that arbitrageurs' activities will always have that effect.

How do arbitraguers affect the price of ETNs and keep that price close to that of its underlying reference asset?

ETN arbitrageurs generally keep the trading price of the ETN from diverging significantly from the value of the underlying reference asset through seeking issuer redemptions, when the ETN is trading at a discount to its indicative value, or by selling the ETN in the secondary market, when the ETN is trading at a premium to its intraday indicative value. Neither the redemption price nor the indicative value of an ETN is affected by supply and demand, as is the trading price.

Does this arbitrage mechanism always keep the trading price of the ETN close to the value of its underlying reference asset?

In an orderly market, ETNs generally trade at a price close to that of their underlying reference asset. However, there are a number of factors that can cause the two prices to diverge, including:

- supply and demand for the ETNs, including inventory positions with any market maker;
- volatility in the markets for the components of the underlying index or other reference asset;
- prevailing interest rates; and
- the creditworthiness of the issuer.

Some ETNs are not widely held and extremely illiquid; those ETNs tend to trade at prices that do not reflect the value of the underlying reference asset. In some cases, ETN issuers have issued press releases warning investors of that price disparity.

Regulatory Issues

Can an issuer stop or suspend ETN issuances?

Yes, an ETN issuer may do so at any time. Issuers suspend ETN issuances for a variety of reasons. Some issuers have internal position limits that, once reached, require them to cease new issuances. Others may suspend ETN issuances for regulatory reasons. Suspensions of ETN issuances cause a disruption in the supply and demand for the ETNs, resulting in a divergence between the trading price of the ETN and its underlying reference asset. Once an issuer suspends new issuances of ETNs, the Regulation M restricted period ends and the issuer no longer needs to rely on the iPath Letter no-action relief.

Are there any regulatory concerns about suspending ETN issuances?

Yes, the SEC has raised concerns about issuer suspensions. In February 2014, the SEC's Division of Corporation Finance, Office of Capital Markets Trends, sent a "sweep letter" to various ETN issuers (the "Sweep Letter"). Among other items, comment 2 of the Sweep Letter instructed issuers to revise their disclosure to highlight the risk of issuance suspensions to investors, whether temporary or permanent.

ETN issuers include robust disclosure about the results of issuance suspensions, such as "we are under no obligation to issue and sell additional ETNs at any time, and if we do sell additional ETNs, we may limit or restrict such sales, and we may stop and subsequently resume selling additional ETNs at any time. If we limit, restrict or stop selling additional ETNs, the price and liquidity of the ETNs in the secondary market could be materially and adversely affected."

Although professional arbitrageurs may be able to profit from price disparities, such as a temporary premium in the ETN's trading price, caused by a suspension of an ETN's issuance, the SEC is concerned about retail investors, who may not understand the risks. For example, an investor might suffer a loss by purchasing its ETN at a premium and then holding the ETN after the premium disappears. If an inexperienced ETN investor were to redeem its ETN at a time when a temporary premium exists, the redemption price would not reflect the premium.

The New York Stock Exchange requires issuers to notify the market if issuances of ETNs will be suspended. The NYSE maintains a list of ETNs and other exchange-traded products that have suspended issuances of new shares at: https://www.nyse.com/products/etp-closed-creation. That site also warns of the potential for the ETN's market price to deviate from the net asset value, and increased volatility.

Source: Listed ETP Compliance Guidance (February 1, 2017) (available at:

https://www.nyse.com/publicdocs/nyse/regulation/nyse-arca/2017_ETP_Compliance_Reminders.pdf.

If an issuer suspends ETN issuances, can it restart issuing ETNs?

Yes, but the issuer may want to consider this carefully. For example, one ETN issuer, due to internal position limits, temporarily suspended issuances of its ETN. Within a few days, the issuer restarted issuances. Due to supply and demand, once suspended, the ETN began trading at a significant premium to its indicative value. Once issuances were restarted, trading prices then quickly converged with the indicative value. Some investors sued, claiming that they were not adequately informed of this possible situation. The issuer prevailed in court, due, in part, to sufficient risk factor disclosure about this very possibility.

Source: *In re TVIX Sec. Litig.*, 25 F. Supp. 3d 444, 456 (S.D.N.Y. 2014), *aff'd*, 588 Fed. Appx. 37 (2d Cir. 2014).

Have regulators expressed any other concerns about ETNs?

Yes. Comment 5 of the Sweep Letter requested that ETN issuers disclose the relationship among the indicative value, the market value of the ETN relative to its initial offering price to the public and the redemption amount. The SEC also requested that issuers include a risk factor about ETNs trading at a substantial discount or premium to their indicative value.

The Financial Industry Regulatory Authority, Inc. ("FINRA") expressed concerns about sales of ETNs in an investor alert in 2012, particularly leveraged and inverse ETNs. The investor alert describes how leveraged and inverse features of certain ETNs may be confusing to non-professional investors. For example, because of the related "reset" feature, which may be daily or monthly, the performance of a two times leveraged (including a two times leveraged inverse) ETN will not be the same as two times the performance (or two times the inverse performance) of the underlying asset. Consequently, FINRA points out that ETNs with leveraged or inverse features are more appropriate as short-term trading tools and should not be purchased by "buy and hold" investors.

The investor alert warned investors that most ETNs are designed for investment professionals and should not be purchased by unsophisticated investors as a buy and hold type investment. Investors should be aware that although ETNs are traded on an exchange they are not always a good investment for non-professionals.

On June 12, 2015, the SEC's Division of Market Regulation issued a Request for Comment ("RFC") on Exchange-Traded Products (ETPs). The request addresses legal standards and other regulatory positions relating to the trading of ETPs (such as ETNs), securities exchange listing standards, market pricing and arbitrage mechanisms. Among other items, the RFC asked about the effect of arbitrage on ETN pricing, whether ETN issuers should be allowed to suspend ETN issuances and the effect of any such suspension on ETN pricing, whether the current Regulation M relief provided by the iPath Letter should be restricted, the use by investors of an ETN's intraday and closing indicative value, and the differences between those values and the ETN's trading price or redemption amount.

The SEC's Office of Investor Education and Advocacy issued an investor bulletin on December 1, 2015 relating to ETNs. The bulletin focused on the differences between ETNs and exchange-traded funds, and also highlighted certain risks applicable to ETNs. The bulletin is quite similar to the FINRA investor alert described above.

Source: FINRA Investor alert "Exchange-Traded Notes - Avoid Unpleasant Surprises" (July 10, 2012), found at http://www.finra.org/Investors/ProtectYourself/InvestorAlerts/TradingSecurities/P131262; SEC Investor Bulletin: Exchange Traded Notes (ETNs) (Dec. 1, 2015), found at: http://www.sec.gov/oiea/investor-alertsbulletins/ib_etn.html. The RFC on ETPs can be found at: http://www.sec.gov/rules/other/2015/34-75165.pdf.

How have banking regulations affected ETNs?

Regulatory actions taken by the Board of Governors of the Federal Reserve System (the "Federal Reserve Board"), the Office of the Comptroller of the Currency (the "OCC") and the Federal Deposit Insurance Corporation (the "FDIC" and, together with the Federal Reserve Board and the OCC, the "Federal Banking Agencies") in connection with the Dodd-Frank Wall Street Reform and Consumer Protection Act have affected, and will continue to affect, the issuance of ETNs.

On December 15, 2016, the Federal Reserve Board issued a final rule (the "Rule") requiring globally systemically important banks ("G-SIBs") to maintain a minimum amount of loss-absorbing instruments (*i.e.*, total loss absorbing capacity or "TLAC") and a minimum amount of unsecured long-term debt. The Rule is designed to facilitate a single point of entry resolution ("SPOE") strategy under which a failed G-SIB's bank holding company ("BHC") would be placed in receivership while its subsidiaries remain intact.

BHCs subject to the Rule are required to maintain outstanding eligible external long-term debt at least equal to the greater of: (i) 6% of risk weighted assets, plus an applicable G-SIB buffer; and (ii) 4.5% of total leverage exposure, as well as outstanding eligible external TLAC equal to the greater of: (i) 18% of risk-weighted assets; and (ii) 7.5% of total leverage exposure. The BHCs are also prohibited from issuing any debt instruments with an original maturity of less than 365 days—a frequent characteristic of ETNs due to their ability to be redeemed daily, and other unrelated liabilities are capped at 5% of the BHC's TLAC. Accordingly, banks have been deterred from issuing ETNs at the BHC level because the ETNs would neither count towards the BHC's TLAC nor long-term debt requirements.

Moreover, the Liquidity Coverage Ratio ("LCR") Final Rule, issued by the Federal Banking Agencies in October 2014, requires that certain institutions maintain a minimum amount of unencumbered high quality liquid assets sufficient to cover projected net cash outflows over a 30-day standardized stress scenario. The LCR Final Rule has affected banks' willingness to issue short-term and callable securities, such as some ETNs, at the BHC level.

Lastly, banks have also reduced their issuance of ETNs as a direct result of the Federal Reserve Board's and FDIC's push for more "convincing" resolution plans (*i.e.*, living wills). Due to the fact that ETNs can generally be redeemed almost immediately after issuance, the ETNs are viewed as short-term debt for purposes of the bank's resolution plan.

Source: Total Loss-Absorbing Capacity, Long-Term Debt, and Clean Holding Company Requirements for Systemically Important U.S. Bank Holding Companies and Intermediate Holding Companies of Systemically Important Foreign Banking Organizations, 82 Fed. Reg. 8266 (Dec. 15, 2016).

Source: Liquidity Coverage Ratio: Liquidity Risk Measurement Standards, 79 Fed. Reg. 61440 (Oct. 10, 2014).

Source: "Agencies Provide Feedback on Second Round Resolution Plans of 'First-Wave' Filers," Press Release (Aug. 5, 2014), available at

http://www.federalreserve.gov/newsevents/press/bcreg/20140805a.htm.

Documentation

Are ETNs medium-term notes?

Most ETNs are part of an issuer's existing series of medium-term notes, although an issuer may issue an ETN as its own series of debt securities under its indenture. If an ETN is a medium-term note, generally the offering documents will be the ETN pricing supplement, the medium-term note prospectus supplement and the base prospectus.

What other documentation is required for an ETN issuance?

These additional documents will be required for an ETN issuance:

- Form 8-A, with the form of ETN note as an exhibit;
- NYSE supplemental listing application;
- NYSE original listing application;
    - This document will include an issuer representation as to which SEC no-action letter the issuer is relying on for Regulation M relief (usually, the iPath Letter);
- Exhibit 5 validity opinion, which may be included in the pricing supplement (if a forward consent opinion is used) or filed as an exhibit to a Form 8-K or 6-K; and
- Exhibit 8 tax opinion, if necessary.

Sales of the ETNs will usually be made by agents party to the issuer's medium-term note distribution agreement. ETN issuers sometimes use marketing agreements with other third-party dealers for ETN sales.

Why do issuers maintain websites for their ETNs?

In the iPath Letter, the issuer represented that it would publish the closing indicative value of its ETNs each day. Although the SEC did not require that publication as a condition of the relief provided in the iPath Letter, issuers have maintained websites on which the closing indicative value and other pieces of information are published on a regular basis. Indeed, frequent ETN issuers' websites have grown into "one-stop shopping" sites, with helpful information for investors. That information includes:

- Indicative values (and ticker symbol);
- Primary exchange (and ticker symbol);
- Underlying reference assets (and ticker symbol);
- 52-week highs and lows;
- Historical returns of the ETN as compared to its underlying reference asset;
- Number of ETNs outstanding;
- Current market capitalization;
- CUSIP numbers;
- Current offering documents;
- Risk factors; and
- Links to relevant press releases and announcements.

The website may also contain educational materials for investors.

As these websites constitute free writing prospectuses, ETN issuers file a copy of the website as an issuer free writing prospectus under Rule 433 under the Securities

Act of 1933. In doing so, the ETN website will fall outside of FINRA's jurisdiction under Rule 2210 ("Communications with the Public").

Why don't ETN issuers publish an estimated initial value for ETNs?

In response to the SEC's Division of Corporation Finance's Office of Capital Markets Trends request in its April 2012 sweep letter to structured product issuers, the offering documents for structured products now disclose the issuer's estimated initial value of the notes. The disclosure highlights the difference between the estimated initial value and the price to the public, with the latter normally being higher than the former. One of the SEC's concerns was that investors may not know that the structured product that they purchased could not be resold immediately at the purchase price that they paid.

ETN issuers have not included an estimated initial value in their prospectuses. That may be due to the following reasons:

- Only a small portion of the full prospectus amount is typically issued on the settlement date; the estimated initial value will change over time;
- All other creations, and secondary market trading, will be at market values;
- ETNs are listed and have much more liquidity than a typical unlisted structured note; consequently, holders can sell their ETNs, or redeem them, at known amounts (NYSE, Nasdaq or BATS prices).

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