October 2026

The Evolving Structured Products Disclosure and Regulatory Framework

MAYER | BROWN

SRP

Agenda

- The market impact of the SEC Staff's expanded abbreviated disclosure framework for structured notes
- Eligibility, scope and key considerations for reliance on the abbreviated disclosure approach
- US regulatory outlook for structured products, including 871(m), action on certain ETFs, and other developments issuers should monitor

Abbreviated Disclosure and the SEC Staff No-Action Letter

The SEC Staff No-Action Letter

- In September 2026, the Staff of the Division of Corporation Finance of the SEC granted our no-action letter modernizing and expanding the framework established with the issuance of the 1996 Morgan Stanley no-action letter.
- This 2026 no-action letter relief confirms the application of the abbreviated disclosure approach described in the MS Letter for the offer of debt securities registered under the Securities Act referencing the performance of certain underlying securities to Structured Notes.
- **ETFs**: Given the extensive regulatory scheme applicable to ETFs, the Staff confirms that, for purposes of a Structured Note prospectus in which an ETF is the Underlying Security, an ETF description that consists of certain specified elements identified in the letter satisfies the abbreviated disclosure requirement.
- **Reference stocks**: The Staff also confirms, in connection with Structured Notes referencing equity securities, that **no seasoning period is necessary** if the issuer of underlying securities meets the listing criteria identified in the MS Letter and has filed with the SEC all reports other than Current Reports on Form 8-K or Form 6-K required to be filed under Section 13 of the Securities 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. This resolves some ambiguity in the market regarding the securities of companies that have recently gone public.

The SEC Staff No-Action Letter *(cont'd)*

- Finally, for the first time, the Staff addresses **indices**.
- The Staff confirms 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 only, a Permissible Index constitutes an index that:
  - is formulaic (rules-based) and does not involve discretion (as understood for purposes of Proposed Treasury Regulation Section 1.6011-16) and
  - 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.
- The letter specifies the required disclosure elements in respect of a Permissible Index to the extent an issuer chooses to rely on this approach (reliance on a no-action letter is, of course, optional).
- In addition, the letter clarifies that inclusion of a hyperlink does not amount to adoption of the linked disclosure. The modernized approach will provide an efficient path forward for those who choose to rely on the abbreviated disclosure options it provides and reflects approaches consistent with those expressed in recent Commission proposing releases.
- See Mayer Brown's incoming request, and the Staff's no-action relief.

Compliance timeline

- The Staff undertook an extensive review of filings in this area and is aware of the volume of issuance.
- There was no indication at all of a deadline or urgency in terms of compliance, nor any intention to use the letter in an enforcement context.
- We would expect that issuers will move to adapt their disclosure practices over time to comply.

Eligibility threshold – application to baskets

- The existing two-step analysis that issuers conduct now in assessing reference assets – i.e., first,whether an index is eligible as a single underlier, second, whether an index would be eligible as a basket component under a certain weight in a note linked to a basket of indices (max weight based on treating the basket as a whole as an "index") – would continue to apply.

Eligibility threshold – “baskets”

- Prior to the letter there were mixed views regarding whether multiple-underlier notes that are not averaged (equally or unequally weighted) baskets also should be subject to the same two-step analysis.
- While the performance factor used in determining the payment at maturity for such a note may not reflect the performance of all of the underliers, the pricing and payments on the notes are determined by reference to all of the underliers. For example, a worst-of phoenix style note will have a coupon rate that reflects all of the underliers and whether individual coupons will be paid may be a result of the performance of different underliers throughout the life of the note.

Disclosure threshold

- The Staff would expect disclosure wherein a concentrated index constituent on its own does not meet the MS Letter test (as updated by the 2026 letter); i.e., a concentrated stock whose issuer is a reporting company and meets the listing criteria or is S-3/F-3 eligible would not need to be separately disclosed.
- The SEC Staff focus here is on investor protection and the real concern being foreign indices with highly concentrated stocks as to which there is no English language readily available current information.
- The Staff accepts the premise generally reflected in this letter and in its recent other proposed rulemakings that where there is accessible public disclosure an investor can reference that on his/her own (and thus we can have greater reliance on abbreviated disclosure for ETFs and the no seasoning for recent IPO issuers) but what they remain concerned about is lack of transparency for non US issuers.
- In practice, as we apply this to the indices that are frequently used, many of the concentrated constituents do meet the MS eligibility criteria as updated even though the indices may track local shares rather than U.S. listed securities. *While the listing criteria prong is based on the referenced securities, the F-3 eligibility prong could be met based on other securities of the issuer.*

Disclosure – non-reporting companies

- An index with a foreign constituent representing >10% its weight would be outside of the relief provided in the new letter. However, the stated goal of the MS Letters (original and updated letter) is to ensure sufficient information is available to investors. It would be consistent with this goal (and analogous to other contexts where it is current market practice) to look to whether an issuer of such an index constituent makes available current English language financials and annual reports.
- While an index that includes such a constituent would not be within the scope of the no action letter, an issuer could still get comfortable with the index as an underlier for structured notes based on the other characteristics of the index (e.g., whether listed options are available on the index, whether the index meets the listing criteria for index-linked notes, etc.) and the availability of information with respect to the relevant constituent.

Proprietary indices

- The letter does not address proprietary indices. Proprietary indices require a more detailed discussion of the index methodology and that's consistent with current market practice.

Links

- Existing market practice is to include a link to the www.sec.gov website. The new no action letter requires a link to EDGAR for purposes of accessing issuer filings. EDGAR does not have a separate landing page, rather the EDGAR search function is available directly on the www.sec.gov home page. Similarly, all individual issuer "pages" are formatted as search results for the relevant issuer or CIK code. We expect that many issuers will continue including the www.sec.gov website address as the relevant link pursuant to the no action letter.
- The abbreviated index disclosure criteria also include an external link to the third party websites where index methodologies are available.
- The SEC has generally begun including requirements for hyperlinks in many different releases as part of a broader modernization effort and has generally indicated that it expects (and wants) the use of hyperlinks to expand.

Credit-Linked Notes

Status

- Historically, the SEC has not been comfortable with registered CLNs.
- However, the Staff recently has considered CLN term sheets. This is the only document that the Staff has reviewed. The Staff has not reviewed, considered, discussed or signed off on any disclosure (no pricing supplement or any other section of disclosure) relating to a CLN offering.
- The Staff discussed and considered with counsel the permissibility of offering an SEC-registered single name CLN wherein the reference issuer meets the conditions of the reading room letter (now the Mayer Brown no action letter). Similarly, the Staff discussed the level of diversification it would look for with respect to a CDS index, confirming that they would not want to see any constituent weighted at over 5% (and confirmed on our call that they would extend that to 10% given the Mayer Brown no action letter if asked again).
- No opinion has been expressed regarding what would constitute sufficient or adequate disclosure; whether such a product would be suitable or appropriate for retail or any other investor (issues of suitability and Reg BI would be for Trading & Markets and other Divisions—presumably Exams) to consider.
- So, engagement on this topic has been somewhat limited.

FINRA Rule 2210 and Projections

SEC Approves FINRA Amendment

- On October 15, 2026, the SEC issued Release No. 34-106675 approving a proposed rule change by the FINRA as modified by Partial Amendment No. 1, to amend FINRA Rule 2210, Communications with the Public (the "Proposed Rule Change").
- There are three exceptions to FINRA Rule 2210's longstanding prohibition on communications that predict or project performance, the Proposed Rule Change creates a fourth, permitting FINRA member firms to project performance or provide a targeted return with respect to a security, a securities portfolio, or an asset allocation or other investment strategy, subject to specified conditions.
- The Proposed Rule Change is an effort to harmonize broker-dealer communications standards with the SEC's Investment Adviser Marketing Rule.
- Under the approved framework, a member communicating projected performance or targeted returns must:
  - Adopt and implement written policies and procedures reasonably designed to ensure that the communication is relevant to the likely financial situation and investment objectives of the intended audience;
  - Provide sufficient information to enable the intended audience to understand the criteria used and assumptions made in calculating the projection or target, and the risks and limitations of using it in making investment decisions; and
  - Maintain records that include information concerning the source of any projection of performance or targeted return used in the communication.

SEC Approves FINRA Amendment

- For projections or targets sourced from third parties, FINRA would not generally expect members to independently verify all underlying criteria and assumptions but would expect members to
  - evaluate the source of the information,
  - assess whether the available information in the projection is supported, and
  - satisfy themselves that the presentation meets the general content standards.
- Members must also consider whether information available from the third party is sufficient to meet their FINRA Rule 2210 obligations.
- The Proposed Rule Change is not yet effective. FINRA will announce the effective date in a Regulatory Notice to be published no later than 60 days after SEC approval, and the effective date will be no later than 180 days after publication of that notice.

Tax Developments

Rev. Rul. 2026-20 Attacks "351 Conversion Transactions"

- What is a "351 conversion transaction"?
  - The Ruling describes a particular fact pattern in which, pursuant to a predetermined plan, a taxpayer would transfer a portfolio of appreciated and diversified securities to a newly formed ETF, which would be expected to qualify as a regulated investment company for US federal income tax purposes.
  - Then, pursuant to the same plan, the ETF would issue shares of the ETF to a person serving as an authorized participant in exchange for either securities that are consistent with the ETF's investment thesis or cash (which the ETF would then use to purchase securities that are consistent with the ETF's investment thesis). Shortly thereafter, the ETF would redeem the shares issued to the authorized participant in exchange for the securities originally contributed to the ETF by the taxpayer in a transaction intended to qualify as distribution under Section 852(b)(6), which would be tax-free to the ETF.
  - Section 852(b)(6) allows a distribution by an ETF to a shareholder without gain recognition to the ETF.
- In the ruling, the IRS concludes that the transfer of the portfolio of appreciated securities by the taxpayer to the ETF must be recharacterized as a taxable exchange between the taxpayer and the authorized participant and the same result applies where there are multiple taxpayers engaged in the transaction.

IRS Identifies Transactions as Possibly Abusive

- Notice 2026-62
  - "351 conversion transaction"
  - Use of partnerships in connection with "351 conversion transaction"
  - Box spread funds
  - Record date strategies
  - Regulated investment company income test avoidance
  - Identified straddles with mixed character
  - Same-day acquisitions and dispositions of foreign currency forward contracts
  - Selective swap terminations used to obtain inconsistent charater

Basket Option Considerations – IRS Notices

- Notice 2015-73 and Notice 2015-74
  - Notice 2015-73: specifically defined "basket option contracts" are listed transactions
    - Obsoleted by Notice 2025-22
  - Notice 2015-74: substantially similar transactions are "transactions of interest"
    - Obsoleted by proposed regulations as of July 12, 2024?

Basket Option Considerations – Proposed Regulations

- Proposed Regulations
  - Specifically defined "basket contracts" and substantially similar transactions are listed transactions
    - Listed transactions are branded "tax avoidance transactions" with higher penalties for failure to disclose
  - Effective upon publication of Final Regulations
    - Applies to open tax years at that time

Basket Option Considerations – What's Caught?

- Contracts based on the performance of a reference basket if:
  - Taxpayer (T) enters into a contract with counterparty (C) to receive a return based on the performance of the reference basket
  - The basket contract has a stated term of more than one year, or overlaps two or more of T's taxable years
  - T or T's designee has exercised discretion to change (either directly or through a request to counter-party) the assets in the reference basket or the trading algorithm; and
  - T's tax return reflects a deferral of income into a later taxable year or a conversion of ordinary income or short-term capital gain or loss into long-term capital gain or loss

Dividend Equivalent Withholding under Section 871(m) - Update

- Notice 2026-61: The "delta-one" rule was extended again for transactions entered into through 2028.
  - Based on public statements, potentially final notice offering transitional relief
  - New proposed regulations in 2027?

Speakers



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- Marla Matusic advises clients on the structuring and trading of complex derivatives and structured financial products. Her practice focuses on bespoke structures designed for institutional and sophisticated investors, proprietary indices and structured product automation.
- She also counsels on issues arising under the federal securities laws, advises clients in the negotiation of ISDA and equity derivative transactions, and assists with the setup and ongoing operation of structured note, warrant, certificate of deposit and commercial paper programs and the ongoing maintenance of and issuances under covered bond programs.



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- Anna Pinedo represents issuers, investment banks and other financial intermediaries as well as investors in financing transactions, including public offerings and private placements of equity, equity-linked and debt securities. She also advises on structured products and derivatives matters.
- In the derivatives area, Anna counsels a number of major financial institutions acting as dealers and participants in the commodities and derivatives markets. She advises on structuring issues as well as on regulatory issues, including those arising under the Dodd-Frank Act. Her work focuses on foreign exchange, equity and credit derivatives products, and structured derivatives transactions. Anna has experience with a wide range of transactions and structures, including collars, swaps, forward and accelerated repurchases, forward sales, hybrid preferred stock and off-balance sheet structures. She also has advised derivatives dealers regarding their Internet sites and other Internet and electronic signature/delivery issues, as well as on compliance matters.



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- Remmelt concentrates his practice on federal and international tax matters.
- He advises on a wide variety of sophisticated capital markets transactions and represents issuers, investment banks/financial institutions and investors in financing transactions, including public offerings and private placements of equity, debt and hybrid securities, as well as structured products.
- Remmelt's areas of experience also include restructurings (both in and out of bankruptcy), debt and equity workouts, domestic and international mergers, acquisitions, reorganizations and joint ventures.

Resources

Legal Update: Revamping Abbreviated Disclosure Requirements for Equity-Linked Securities 30 Years Following Issuance of the Morgan Stanley No-Action Letter (September 28, 2026)

Legal Update: The Odds Are In: CFTC Proposes Framework for Event Contracts and Prediction Markets (June 23, 2026)

Legal Update: CFTC Issues Request for Comment and Staff Advisory on Prediction Markets (March 13, 2026)

Legal Update: CFTC Staff Partially Reinstate CPO Exemption for RIAs (December 24, 2025)

Legal Update: CFTC Harmonizes US Person and Guarantee Definitions in Swap Requirements (December 15, 2025)

Legal Update: Risk Transfer Market Receives CPO Registration Relief from CFTC (December 1, 2025)

Recent Webinar: NAIC/SVO Understanding Changes to the Regulatory Capital Landscape (April 2026)

Recent Webinar: The Regulatory Curve: Developments Involving Commodity Pool Operators and Advisors (March 2026)

Recent Defined Outcome Sessions (Access Slides & Recordings Here):

- Comparing the tax treatment to investors of structured products, ETNs, UITs, and ETFs
- Tax structuring issues for entities taxed as registered investment companies (RICs, UITs and ETFs)
- Comparing disclosure and other requirements applicable to ETFs with those applicable to structured notes and ETNs
- Considerations for index providers to, or hedge providers to, ETFs

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