



## Regulatory Bulletin

NYSE Arca RB-19-028  
NYSE RB-19-022  
NYSE American RB-19-023  
NYSE National RB-19-022  
NYSE Chicago RB-19-006

March 7, 2019

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**To:** NYSE ARCA, INC. (“NYSE ARCA”) ETP HOLDERS  
NEW YORK STOCK EXCHANGE LLC (“NYSE”) MEMBERS AND MEMBER ORGANIZATIONS  
NYSE AMERICAN LLC (“NYSE AMERICAN”) MEMBERS AND MEMBER ORGANIZATIONS  
NYSE NATIONAL, INC. (“NYSE NATIONAL”) ETP HOLDERS  
NYSE CHICAGO, INC. (“NYSE CHICAGO”) PARTICIPANTS  
(COLLECTIVELY, THE “MEMBERS”)

**Subject:** XTRACKERS MSCI USA ESG LEADERS EQUITY ETF

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The following exchange-traded fund (the “Fund”) has been approved for listing on NYSE Arca and will commence trading on March 7, 2019:

<u>Exchange-Traded Fund</u>	<u>Symbol</u>	<u>Registration Statement</u>
Xtrackers MSCI USA ESG Leaders Equity ETF	USSG	333-170122

Concurrent with the commencement of trading on NYSE Arca, the Fund will commence trading pursuant to unlisted trading privileges on the NYSE, NYSE American, NYSE National and NYSE Chicago.

Compliance and supervisory personnel should note that, among other things, this Information Bulletin discusses rules related to suitability of recommending transactions in the shares (“Shares”) of the Fund to customers. Please forward this information Bulletin to other interested persons within your organization.

### **Background on the Securities**

The Fund is registered under the Investment Company Act of 1940 (“1940 Act”) as an open-end management investment company. The Fund seeks investment results that correspond (before fees and expenses) generally to the price and yield performance of its underlying index and employs a “passive management” – or indexing – investment approach designed to track the performance of the applicable index.

The Fund’s underlying index name, IIV symbol, NAV symbol and website are set forth below:

<u>Underlying Index</u>	<u>IIV Symbol</u>	<u>NAV Symbol</u>	<u>Website</u>
MSCI USA ESG Leaders Index	USSG.IV	USSG.NV	<a href="http://www.Xtrackers.com">www.Xtrackers.com</a>

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The Fund issues and redeems Shares at net asset value (“NAV”) only in a large specified number of Shares called a “Creation Unit,” or multiples thereof (typically 20,000 to 100,000 Shares). Creation Unit transactions are typically conducted in exchange for the deposit or delivery of in-kind securities in the underlying index and/or cash.

### **Risk Factor Information**

Interested persons are referred to the Fund’s Registration Statement for a description of risks associated with an investment in the Fund. These may include, but are not limited to, equity investing risk, asset class risk, concentration risk, industry/sector risk, issuer risk, liquidity risk, index risk, market risk, asset class risk, interest rate risk, tax risk and valuation risk.

In addition, the market prices of the Shares will fluctuate in accordance with changes in NAV as well as the supply and demand for the Shares. As a result, the Shares may trade at market prices that may differ from their NAV. The NAV of the Shares of the Fund will fluctuate with changes in the market value of the Fund’s holdings.

### **Other Information About the Fund**

The Depository Trust Company (“DTC”) will serve as securities depository for the Shares of the Fund, which may be held only in book-entry form; stock certificates will not be issued. DTC, or its nominee, is the record or registered owner of all outstanding Shares.

The NAV per share of the Fund will be determined as of the close of trading (normally, 4:00 p.m. Eastern Time (“ET”)) on each day that the NYSE is open for business. The NAV will be available from the applicable distributor for the Fund and is also available to National Securities Clearing Corporation (“NSCC”) participants through data made available from NSCC. A major market data vendor will disseminate the Intraday Indicative Value (IIV) for the Shares of the Fund throughout regular trading hours.

The Fund’s Registration Statement describes the various fees and expenses for the Fund’s Shares. For a more complete description of the Fund, and its underlying index, see the Fund’s Registration Statement and its website.

### **Exchange Rules Applicable to Trading in the Shares**

The Shares of the Fund are considered equity securities, thus rendering trading in the Shares subject to NYSE Arca, NYSE, NYSE American, NYSE National and NYSE Chicago's existing rules governing the trading of equity securities.

### **Trading Hours**

The value of the underlying index will be disseminated to data vendors every 15 seconds, 60 seconds or once per day, as applicable, from 9:30 a.m. ET until 4:00 p.m. ET. The Shares will trade on NYSE Arca from 4:00 a.m. ET until 8:00 p.m. ET on every business day in accordance with NYSE Arca Rule 7.34-E(a). The Shares will trade on NYSE American and NYSE National from 7:00

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a.m. ET until 8:00 p.m. ET on every business day in accordance with NYSE American Rule 7.34E and NYSE National Rule 7.34, respectively. The Shares will trade on the NYSE from 7:00 a.m. ET until 4:00 p.m. ET on every business day in accordance with NYSE Rule 7.34. The Shares will trade on NYSE Chicago from 7:00 a.m. ET until 4:15 p.m. ET on every business day in accordance with NYSE Chicago Article 20, Rule 1.

### **Extended Hours Trading**

Shares of the Fund will trade on NYSE Arca, NYSE, NYSE American, NYSE National and NYSE Chicago from 9:30 a.m. ET until 4:00 p.m. ET (the “Core Trading Session”). In addition, Shares of the Fund will trade (i) on NYSE Arca from 4:00 a.m. ET until 9:30 a.m. ET (the “NYSE Arca Early Trading Session”), (ii) on the NYSE, NYSE American, NYSE National and NYSE Chicago from 7:00 a.m. ET until 9:30 a.m. ET (the “NYSE/NYSE American/NYSE National/NYSE Chicago Early Trading Session” and, together with the NYSE Arca Early Trading Session, the “Early Trading Sessions”), (iii) on NYSE Chicago from 4:00 p.m. ET until 4:15 p.m. ET (the “NYSE Chicago Late Trading Session”), and (iv) on NYSE Arca, NYSE American and NYSE National from 4:00 p.m. ET until 8:00 p.m. ET (the “NYSE Arca/NYSE American/NYSE National Late Trading Session” and, together with the NYSE Chicago Late Trading Session, the “Late Trading Sessions”).

Members are reminded of NYSE Arca Rule 7.34-E(d), NYSE Rule 7.34, NYSE American Rule 7.34E(e), NYSE National Rule 7.34 and NYSE Chicago Article 8, Rule 17 regarding Customer Disclosure and that trading in a Fund’s Shares during the Early Trading Sessions or Late Trading Session may result in additional trading risks which include: (1) that the current applicable underlying Index value may not be updated during the Early Trading Sessions or Late Trading Session, (2) the IIV may not be updated during the Early Trading Sessions or Late Trading Session, (3) lower liquidity in the Early Trading Sessions or Late Trading Session may impact pricing, (4) higher volatility in the Early Trading Sessions or Late Trading Session may impact pricing, (5) wider spreads may occur in the Early Trading Sessions or Late Trading Session, and (6) since the IIV is not calculated or widely disseminated during the Early Trading Sessions or Late Trading Session, an investor who is unable to calculate an implied value for Shares of a Fund in those sessions may be at a disadvantage to market professionals.

### **Suitability**

Trading in the Shares of a Fund on NYSE Arca, NYSE, NYSE American, NYSE National and NYSE Chicago will be subject to the provisions of NYSE Arca Rule 9.2E(a)-(b), NYSE Rule 2111 - Suitability, NYSE American Rule 2111 - Equities, NYSE National Rule 11.2111 - Suitability and NYSE Chicago Article 8, Rule 11, respectively, and other applicable suitability rules. Members recommending transactions in the Shares of the Fund to customers should make a determination that the recommendation is suitable for the customer.

### **Trading Halts**

NYSE Arca, NYSE, NYSE American, NYSE National and NYSE Chicago will halt trading in the Shares for a regulatory halt similar to a halt based on NYSE Arca Rule 7.18-E, NYSE Rule 7.18, NYSE American Rule 7.18E, NYSE National Rule 7.18 and NYSE Chicago Article 22, Rule 6,

respectively, and/or a halt because dissemination of the IIV of the Shares and/or the underlying value of the index has ceased. Further, each exchange will halt trading in the Shares in accordance with NYSE Arca Rule 7.12-E, NYSE Rule 80B, NYSE American Rule 7.12E, NYSE National Rule 7.12 and NYSE Chicago Article 20, Rule 2 (“Trading Halts Due to Extraordinary Market Volatility”).

### **Delivery of a Prospectus**

Consistent with the requirements of the Securities Act of 1933 and the rules thereunder, investors purchasing Shares in the initial public offering and anyone purchasing Shares directly from the Fund (by delivery of the designated securities) must receive a prospectus. In addition, Members are required to deliver a prospectus to all purchasers of newly-issued Shares (*i.e.*, during the initial public offering). Members purchasing shares from a Fund for resale to investors will deliver a prospectus to such investors.

Prospectuses may be obtained through a Fund’s website. The Prospectus does not contain all of the information set forth in a Fund’s registration statement (including the exhibits to the registration statement), parts of which have been omitted in accordance with the rules and regulations of the Securities and Exchange Commission (the “Commission”).

In the event that a Fund relies upon an order by the Commission exempting the Shares from certain prospectus delivery requirements under Section 24(d) of the 1940 Act and makes available a written product description, NYSE Arca Rule 5.2E(j)(3), NYSE Rule 5.2(j)(3), NYSE American Rule 5.2E(j)(3) and NYSE Chicago Article 22, Rule 24 require that Members provide to all purchasers of Shares a written description of the terms and characteristics of such securities, in a form prepared by a Fund’s trust, no later than the time a confirmation of the first transaction in the Shares, is delivered to such purchaser. In addition, Members shall include such a written description with any sales material relating to the Shares that is provided to customers or the public. Any other written materials provided by Members to customers or the public making specific reference to the Shares as an investment vehicle must include a statement in substantially the following form: “A circular describing the terms and characteristics of Shares of the Fund has been prepared by the Fund’s trust and is available from your broker. It is recommended that you obtain and review such circular before purchasing Shares of the Fund. In addition, upon request you may obtain from your broker a prospectus for Shares of the Fund.”

Members carrying an omnibus account for a non-member is required to inform such non-member that execution of an order to purchase Shares for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members under this rule.

Upon request of a customer, Members shall also provide a copy of the applicable prospectus.

### **Exemptive, Interpretive and No-Action Relief Under Federal Securities Regulations**

The Commission has issued letters (the “No-Action Letters”) granting exemptive, interpretive and no-action relief from certain provisions of rules under the Securities Exchange Act of 1934 (“Act”) for

exchange-traded securities listed and traded on a registered national securities exchange that meet certain criteria.

**AS WHAT FOLLOWS IS ONLY A SUMMARY OF THE RELIEF OUTLINED IN THE NO-ACTION LETTERS REFERENCED ABOVE, THE EXCHANGE ADVISES INTERESTED PARTIES TO CONSULT THE NO-ACTION LETTERS FOR MORE COMPLETE INFORMATION REGARDING THE MATTERS COVERED THEREIN AND THE APPLICABILITY OF THE RELIEF GRANTED IN RESPECT OF TRADING IN SECURITIES. INTERESTED PARTIES SHOULD ALSO CONSULT THEIR PROFESSIONAL ADVISORS.**

#### Regulation M Exemptions

Generally, Rules 101 and 102 of Regulation M prohibit any "distribution participant" and its "affiliated purchasers" from bidding for, purchasing, or attempting to induce any person to bid for or purchase any security which is the subject of a distribution until after the applicable restricted period, except as specifically permitted in Regulation M. The provisions of these rules apply to underwriters, prospective underwriters, brokers, dealers, and other persons who have agreed to participate or are participating in a distribution of securities. The Commission has granted an exemption from Rule 101 under Regulation M to permit persons participating in a distribution of shares of a fund meeting the criteria in the No-Action Letters to engage in secondary market transactions in such shares during their participation in such a distribution. In addition, the Commission has granted relief under Regulation M to permit persons who may be deemed to be participating in the distribution of shares of a fund meeting the criteria in the No-Action Letters (i) to purchase securities for the purpose of purchasing Creation Unit Aggregations of fund shares and (ii) to tender securities for redemption in Creation Unit Aggregations. Further, the SEC has clarified that the tender of shares of a fund meeting the criteria in the No-Action Letters for redemption does not constitute a bid for or purchase of any of the fund's securities during the restricted period of Rule 101. The SEC has also granted an exemption pursuant to paragraph (e) of Rule 102 under Regulation M to allow the redemption of fund shares in Creation Unit Aggregations during the continuous offering of shares.

#### Customer Confirmations for Creation or Redemption of Fund Shares (SEC Rule 10b-10)

Broker-dealers who handle purchases or redemptions of Fund shares in Creation Units for customers will be permitted to provide such customers with a statement of the number of Creation Unit Aggregations created or redeemed without providing a statement of the identity, number and price of shares of the individual securities tendered to the Fund for purposes of purchasing Creation Unit Aggregations ("Deposit Securities") or the identity, number and price of shares to be delivered by the Trust to the redeeming holder ("Redemption Securities"). The composition of the securities required to be tendered to a Fund for creation purposes and of the securities to be delivered on redemption will be disseminated each business day and will be applicable to requests for creations or redemption, as the case may be, on that day. This exemptive relief under Rule 10b-10 with respect to creations and redemptions is subject to the following conditions:

- (1) Confirmations to customers engaging in creations or redemptions must state that all information required by Rule 10b-10 will be provided upon request;
- (2) Any such request by a customer for information required by Rule 10b-10 will be filed in a timely manner, in accordance with Rule 10b-10(c);

- (3) Except for the identity, number and price of shares of the component securities of the Deposit Securities and Redemption Securities, as described above, confirmations to customers must disclose all other information required by 10b-10(a).

#### SEC Rule 14e-5

The Commission has permitted any person acting as a dealer-manager of a tender offer for a component security of the Fund (i) to redeem Fund shares in Creation Unit Aggregations from the issuer that may include a security subject to such tender offer and (ii) to purchase Fund shares during such tender offer. In addition, a No-Action Letter issued under Rule 14e-5 states that if a broker-dealer acting as a dealer-manager of a tender offer for a security of a Fund purchases or arranges to purchase such securities in the secondary market for the purpose of tendering such securities to purchase one or more Creation Unit Aggregations of shares, it must be made in conformance with the following:

- (1) Such bids or purchases are effected in the ordinary course of business, in connection with a basket of 20 or more securities in which any security that is the subject of a distribution, or any reference security, does not comprise more than 5% of the value of the basket purchased; or
- (2) Purchases are effected as adjustments to such basket in the ordinary course of business as a result of a change in the composition of the underlying index; and
- (3) Such bids or purchases are not effected for the purpose of facilitating such tender offer.

#### Section 11(d)(1); SEC Rules 11d1-1 and 11d1-2

Section 11(d)(1) of the Act generally prohibits a person who is both a broker and a dealer from effecting any transaction in which the broker-dealer extends credit to a customer on any security which was part of a new issue in the distribution of which he participated as a member of a selling syndicate or group within thirty days prior to such transaction. The SEC

has clarified that Section 11(d)(1) does not apply to broker-dealers that are not Authorized Participants (and, therefore, do not create Creation Unit Aggregations) that engage in both proprietary and customer transactions in Shares of a fund in the secondary market, and for broker-dealer Authorized Participants that engage in creations of Creation Unit Aggregations. This relief is subject to specific conditions, including the condition that such broker-dealer (whether or not an Authorized Participant) does not, directly or indirectly, receive from the fund complex any payment, compensation or other economic incentive to promote or sell the shares of a fund to persons outside the fund complex, other than non-cash compensation permitted under NASD Rule 2830(l)(5)(A), (B) or (C). (See letter from Catherine McGuire, Chief Counsel, SEC Division of Market Regulation, to Securities Industry Association, Derivative Products Committee, dated November 21, 2005.) The SEC also has taken a no-action position under Section 11(d)(1) of the Act that broker-dealers may treat shares of a fund, for purposes of Rule 11d1-2, as "securities issued by a registered open-end investment company as defined in the Investment Company Act" and thereby extend credit or maintain or arrange for the extension or maintenance of credit on shares that have been owned by the persons to whom credit is provided for more than 30 days, in reliance on the exemption contained in the rule.

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SEC Rule 15c1-5 and 15c1-6

The SEC has taken a no-action position with respect to Rule 15c1-5 and Rule 15c1-6 as to the required disclosure of control by a broker or dealer with respect to creations and redemptions of fund shares and secondary market transactions therein. (See letter from Catherine McGuire, Chief Counsel, SEC Division of Market Regulation, to Securities Industry Association, Derivative Products Committee, dated November 21, 2005.)

**This Information Bulletin is not a statutory prospectus. Members should consult the applicable trust's registration statement, Statement of Additional Information, prospectus and the Fund's website for relevant information.**